SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No.

FEDERAL LAND BANK OF COLUMBIA, S. C.,
PETITIONER,

vs.

MRS. WILL GAINES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1933

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[fol. 1]

IN SUPREME COURT OF NORTH CAROLINA, EIGHTEENTH DISTRICT, FALL TERM, 1932

No. 552

FEDERAL LAND BANK OF COLUMBIA, S. C., Plaintiff,

v.

Mrs. WILL GAINES, Defendant

Before Schenk, Judge, April Term, 1932, Polk County Superior Court. Plaintiff Appealed

This is a controversy without action, submitted to the Superior Court for Polk County on the following agreed case:

IN SUPERIOR COURT OF POLK COUNTY

THE FEDERAL LAND BANK OF COLUMBIA

v.

Mrs. WILL GAINES

AGREEMENT AND AFFIDAVIT IN CONTROVERSY WITHOUT ACTION

The Federal Land Bank of Columbia, South Carolina, by its undersigned attorney, J. S. Massenburg, and Mrs. Will Gaines, by her undersigned attorney, M. R. McCown, say and agree:

[fol. 2] 1. That the aforesaid Federal Land Bank of Columbia and Mrs. Will Gaines are parties to a question in difference which might be the subject of a civil action, and said parties desire, without action, to present and submit the said controversy to the Superior Court of Polk County, which Court would have jurisdiction if an action had been brought.

2. That the statement of facts hereto attached constitutes all of the facts and the agreed case upon which the controversy may be decided.

3. That the controversy is real and the proceedings in good faith to determine the rights of the parties.

J. S. Massenburg, Attorney for Federal Land Bank of Columbia, S. C. M. R. McCown, Attorney for Mrs. Will Gaines.

NORTH CAROLINA,
Polk County:

Personally appeared before me Mrs. Will Gaines, who being duly sworn, says that she has read the foregoing statement and the agreed statement of facts, and the said case and proceedings are brought in good faith to determine the rights of the parties and the said controversy is real.

Mrs. Will Gaines.

Sworn to and subscribed before me this 15th day of Mareh, 1932. My commission expires May 18, 1933. J. B. Hester, Notary Public, North Carolina. (Seal.)

IN SUPERIOR COURT OF POLK COUNTY

AGREED STATEMENT OF FACTS IN CONTROVERSY BETWEEN THE FEDERAL LAND BANK OF COLUMBIA AND MRS. WILL GAINES

1. The Federal Land Bank of Columbia is a Federal Land Bank chartered, organized and doing business under the provisions of an Act of the Congress of the United States known as The Federal Farm Loan Act.

[fol. 3] 2. The Columbus National Farm Loan Association is a National Farm Loan Association chartered, organized and doing business under the terms and provisions of The Federal Farm Loan Act.

3. On August 16, 1930, Mrs. Will Gaines made application through the Columbus National Farm Loan Association to The Federal Land Bank of Columbia for a loan of One Thousand ($1,000) Dollars, offering as security for the loan a mortgage on twenty-seven (27) acres of land in Polk County, North Carolina. The application was approved.

by the Columbus National Farm Loan Association on August 20, 1930, and on that date Mrs. Gaines was admitted to membership in said Association. The application was approved by The Federal Land Bank of Columbia on October 1, 1930. A copy of the application for the loan is attached to this statement of facts, made a part hereof, marked Exhibit A.

4. On October 2, 1930, Mrs. Gaines was advised by The Federal Land Bank of Columbia of the approval of her application for a loan, and was requested to select from a list of approved attorneys furnished her by the bank, attorneys to prepare an abstract of title for consideration of the bank. Mrs. Gaines employed Messrs. Jones and Massenburg to prepare the abstract of title, and they furnished it to the bank on October 25, 1930.

5. On November 5, 1930, Mrs. Gaines executed and delivered to The Federal Land Bank of Columbia a note and mortgage for the loan in the amount of $1,000, copies of which are attached to this statement of facts, marked, respectively, Exhibits B and C, and made part hereof.

6. On November 14, 1930, The Federal Land Bank of Columbia sent to Messrs. Jones and Massenburg its check on the Commercial National Bank of Charlotte, North Carolina, dated November 12, 1930, for $945.00, payable jointly to Percy Lewis, secretary-treasurer of the Columbus National Farm Loan Association, and Mrs. Will Gaines, with instructions to the attorneys and to the secretary-[fols. 4-11] treasurer of the Columbus National Farm Loan Association for closing the loan to Mrs. Gaines. A copy of the check, with endorsements thereon, is attached to this statement, made part hereof, marked Exhibit D. With the check was sent a closed loan statement, to be filled in by the secretary-treasurer of the Columbus National Farm Loan Association and signed by him and Mrs. Gaines. A copy of the statement as sent with the check is attached to this statement, made part hereof, and marked Exhibit E. The check represented the proceeds of the loan after deducting Fifty ($50) Dollars for Mrs. Gaines' stock in the Columbus National Farm Loan Association, Three ($3.50) Dollars and Fifty Cents for title determination fee, and One ($1.00) Dollar for title insurance premium.

7. The check referred to in the preceding paragraph was delivered by the attorneys to Percy Lewis, secretary-treasurer of Columbus National Farm Loan Association, on November 18, 1930, and was handled by him as indicated in a letter addressed by Mr. Lewis under date of October 19, 1931, to Mr. M. R. McCown, a copy of which is attached to this statement, marked Exhibit F, and made part hereof. At the time of this transaction the Polk County Bank and Trust Company was the only bank in Columbus, North Carolina. The Polk County Bank and Trust Company was open for business through Friday, November 21, 1930, but failed to open for business on Saturday, November 22, 1930.

8. No payments on the loan have been made by Mrs. Gaines to The Federal Land Bank of Columbia, although The Federal Land Bank of Columbia has demanded from Mrs. Gaines payment of the interest, which under the terms of the note executed by her was due December 1, 1930, and of the interest and the first installment of principal, which under the terms of the note were due December 1, 1931.

This 15th day of March, 1932.

M. R. McCown, Attorney for Mrs. Will Gaines. J. S. Massenburg, Attorneys for The Federal Land Bank of Columbia.

[fol. 12] EXHIBIT "C" TO AGREED STATEMENT OF FACTS:

Form L-4—North Carolina—Revised—2-20-31. Springfield Plan.
dd-10-29-30.
eb-dd.

Original

The Federal Land Bank of Columbia

Amortization First Mortgage

Annual Payment

STATE OF NORTH CAROLINA,
County of Polk:

This Indenture, made this 5 day of November, 1930, by and between Mrs. Addie (Mrs. Will M.) Gaines, widow, of

Polk County, State of North Carolina, hereinafter called parties of the first part, whether one or more, and The Federal Land Bank of Columbia, party of the second part, a corporation organized, created and existing under and by virtue of an Act of Congress of the United States of America, entitled "The Federal Farm Loan Act," Witnesseth, That

Whereas, the said parties of the first part are indebted to The Federal Land Bank of Columbia, party of the second part, as evidenced by a certain promissory note of even date herewith, for the principal sum of One Thousand and No/100 ($1,000.00) Dollars, payable to the order of The Federal Land Bank of Columbia, bearing interest at 6 per centum per annum from date to and including the first day of December, 1930, which shall be known as the preliminary interest payment, and thereafter interest from the date last mentioned on the said principal sum of said note, plus the first installment of principal as shown by the amortization table printed on the back of said note, is to be paid on the first day of December, 1931, and the remaining Nine (9) installments successively, including principal and interest, on the same day of each year thereafter until all have matured on an amortization plan in the order and in the several respective amounts as the same are set forth in and fully in accordance with the amortization table [fol. 13] printed on the back of said note, which is hereby accepted and made a part of this mortgage, and provided that, in the event of default in the payment of any installment or installments in accordance with the terms thereof, the same shall bear simple interest from date of such default until paid at the rate of six (6) per centum per annum, and providing further that, after five years from date and on any regular installment date, an additional payment on the principal may be made in such an amount that shall be equal to one or more of the annual payments on the principal as ascertained from the amortization tables prescribed by the Federal Farm Loan Board or the entire principal sum may be paid, all of which and such other terms as therein contained will more fully appear by reference to said note.

Now, Know All Men, That the said parties of the first part of the County and State aforesaid, in consideration of the debt as evidenced by said note, and for the better

securing of the payment thereof, to the said The Federal Land Bank of Columbia, according to the terms of said note, and the performance of the conditions and covenants herein contained, and also in consideration of the sum of One Dollar to the said parties of the first part in hand well and truly paid by the said The Federal Land Bank of Columbia, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto the said The Federal Land Bank of Columbia, its successors or assigns.

All that certain piece, parcel or tract of land situate, lying and being in the Township of Tryon, County of Polk and State of North Carolina, adjoining the lands of Thomas Alewine, T. C. Mills, R. B. Stredwick, Thomas Howard, Wilson Howard and R. A. Leonard, and bounded and more particularly described as follows, viz:

Beginning at a pine on Alewine's road in line of Thomas Alewine and runs thence South 56 deg. 30 min. West with lines of Thomas Alewine and T. C. Mills 14 chains to a Black Gum; thence with said T. C. Mills and R. B. Stredwick's line South 21 deg. 30 min. East 14 chains to a White [fol. 14] Oak, Stredwick's corner; thence with said Stredwick's line South 47 deg. 30 min. East 3.18 chains to a stone, R. E. Stredwick's and Thomas Howard's corner; thence with line of said Thomas Howard North 67 East 18.82 chains to pine on edge of Alewine road, Thomas and Wilson Howard's corner; thence with the meanders of said road North 57 deg. 30 min. West 80 feet; thence North 60 deg. 15 min. West 128 feet; thence North 57 deg. 30 min. West 114 feet; thence North 49 deg. 51 min. West 211 feet; thence North 23 deg. 30 min. West 80 feet; thence North 31 deg. 15' West 8½ chains to the point of beginning, containing 28 7/100 acres, more or less, and being the major part of the land conveyed to W. M. Gaines by deed from Anna Reasoner and husband, L. P. Reasoner, dated December 5, 1908, and of record in Book 26, at page 528, of the Records of Deeds for Polk County, North Carolina, and being bounded on the north by the lands of T. C. Mills; on the East by the lands of R. A. Leonard and V. C. Scism; on the South by lands of Thomas Howard, and on the West by lands of T. C. Mills and R. B. Stredwick, as will more fully

appear by reference to a plat thereof made by T. C. Mills in 1906, and attached to the abstract now on file with The Federal Land Bank of Columbia.

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining.

To Have and to Hold, the same with all the rights, privileges, easements and appurtenances thereto belonging unto the said The Federal Land Bank of Columbia, its successors or assigns forever. And the said parties of the first part for themselves, their heirs, executors and administrators, covenant to and with the party of the second part, its successors or assigns, that they are seized of said premises in fee and have a present right to convey the same, that the same is free from all encumbrances and that they will warrant and defend the title thereto against all lawful claims. [fol. 15] Provided always, nevertheless, and it is the true intent and meaning of the parties to these presents, that if the said parties of the first part shall well and truly pay, or cause to be paid, unto the said The Federal Land Bank of Columbia, its successors or assigns, the said debt or sum of money with interest thereon as aforesaid, and shall perform all conditions and covenants according to the true intent and meaning of said note and this mortgage, then this mortgage shall cease, determine and be utterly null and void; otherwise it shall remain in full force and effect.

1. And It Is Covenanted, By and between the said parties that the said parties of the first part, their heirs, executors or administrators, will insure and keep insured, to the satisfaction of The Federal Land Bank of Columbia, all the buildings and improvements now on said premises, the value of which was a factor in determining the amount of the loan secured hereby against loss or damage by fire or wind storm, in such sum or sums as may be required by The Federal Land Bank of Columbia, and in such company or companies as may be approved by The Federal Land Bank of Columbia, its successors or assigns, the loss, if any, to be payable to The Federal Land Bank of Columbia as its interest may appear at the time of the loss, and will deliver said policy or policies of insurance to The Federal Land Bank of Columbia, and will promptly pay when due all premiums for such insurance. In case any insured build-

ings or improvements on said premises are destroyed or damaged by fire or wind storm the sum or sums collected from said insurance may at the option of said parties of the first part be applied either to the payment of the note secured by this mortgage, or, subject to regulations of the Federal Farm Loan Board and under the direction of The Federal Land Bank of Columbia, to the reconstruction of the buildings or improvements so destroyed or damaged.

2. And It Is Further Covenanted, That the said parties of the first part shall pay as the same become due, all taxes, liens, judgments, or assessments which may be lawfully assessed against the property hereby mortgaged.

[fol. 16] 3. And It Is Further Covenanted, That if the said parties of the first part, their heirs, executors, administrators or assigns, shall fail to procure and maintain said insurance, or if after procuring the same shall fail to pay the premium charged therefor, or shall fail to pay said taxes, liens, judgments, or assessments as herein agreed, then The Federal Land Bank of Columbia, its successors or assigns, may effect said insurance and pay the premiums thereon, as well as any unpaid premium for an insurance policy procured and deposited by the party of the first part with the party of the second part under the provisions of section one hereof, and may also pay said taxes, liens, judgments, or assessments; and the money so advanced for the payment of such insurance premiums, taxes, liens, judgments, or assessments shall be added to the mortgage debt and become a part thereof and the repayment of the same with simple interest at the rate of six (6) per centum per annum from the date of such payment and until paid shall be secured by this mortgage, and The Federal Land Bank of Columbia, its successors or assigns, shall be subrogated to all rights of the party or parties to whom payments have been made; provided that the amount so advanced by the party of the second part to pay any such insurance premium, tax, lien, judgment or assessment shall, at the option of the party of the second part, be repaid by the party of the first part forthwith upon demand or thereafter at the time the next installment is due to be paid; and a failure to comply with the provisions of this proviso shall constitute such an immediate default in the insurance agreement

under the provisions of section six hereof as will entitle the party of the second part to all the remedies therein or elsewhere herein provided.

4. And It Is Further Covenanted, That the said parties of the first part, their agents, tenants, heirs, executors, administrators or assigns, shall keep all buildings and improvements now on said premises, or hereafter erected thereon, in as good order and condition as they now are, and will not commit or permit waste, including the removal [fol. 17] of any timber from said premises, or use the timber on said premises for turpentine purposes, or any other purpose, except for firewood and ordinary plantation purposes, without the consent in writing of The Federal Land Bank of Columbia or injure the premises to such an extent as will impair the value of the security of this loan.

5. And It Is Furtner Covenanted, That the said parties of the first part shall use the entire amount derived from the proceeds of the note and this mortgage either: for (1), the purpose or purposes specified by the party of the second part at the time the loan is approved; or (2), with the permission of The Federal Land Bank of Columbia for any purpose specified in section 12, subsection 4 of the Federal Farm Loan Act and amendments thereto; or (3), for the payment of the stock subscription in the National Farm Loan Association, subscribed for in the application for the loan secured hereby.

6. It is Further Covenanted, That if the said parties of the first part, their heirs, executors or assigns, shall as aforesaid pay all installments as specified in the note and in this mortgage according to the terms and conditions thereof, then this mortgage shall be null and void; but if the said parties of the first part shall fail to pay the preliminary interest installment, or any of the said installments as they become due and payable, or to perform all of the conditions and covenants as specified in the note and in this mortgage; or if default be made in the insurance agreement or in the payment of said taxes, liens, judgments, or assessments as herein provided; or if the buildings and improvements are not kept in as good repair as they now are; or if injury or waste is done or permitted which impairs the value of the security of this mortgage;

or if the proceeds derived from the said note and this mortgage are used for any purpose or purposes other than herein specified, then at the option of the said The Federal Land Bank of Columbia, or its successors or assigns, the whole principal sum of said note remaining unpaid at that time, together with all accrued interest and all other sums [fol. 18] including all advances made for taxes, liens, judgments, or assessments, premiums of insurance and charges of any kind, shall at once become due and payable without notice, and this mortgage may forthwith be foreclosed for the whole amount of said sums, interest and costs.

7. And It is Further Covenanted, That as a further security for the payment of the note and all installments thereof, and for the performance of all the terms of said note and all the conditions and covenants of this mortgage that the said parties of the first part hereby assign, set over and transfer to The Federal Land Bank of Columbia, its successors or assigns, all of the rents and income of said mortgaged premises for each and every year that any installment or installments of the said note may be unpaid, together with all rights and remedies for enforcing collection of the same; and that, upon filing suit, or at any time thereafter, of foreclosure. The Federal Land Bank of Columbia, its successors or assigns, shall be entitled to have a receiver appointed to take charge of the said mortgaged premises, together with all the rents, profits, crops and proceeds arising therefrom during such litigation and to hold the same subject to the order and direction of the Court.

8. And It Is Further Covenanted, That the said parties of the first part, their heirs, executors, administrators or assigns, shall hold and enjoy the said premises until default in payment of the installments as provided in said note or a breach of any of the conditions and covenants of this mortgage shall be made.

9. It Is Especially Covenanted, as well as represented and declared as a condition hereof, by the said parties of the first part, that, when the loan secured hereby is closed, there will be no outstanding and unsatisfied encumbrance of any nature against the lands herein described prior to the lien hereof.

10. It Is Expressly Made a Covenant and condition hereof that in case of error in this mortgage or the note which it secures, a note and mortgage to correct the same, dated as of this date, will be promptly executed by the mortgagor.

[fol. 19] In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) Mrs. Addie (Mrs. Will M.) Gaines, Widow. (Seal.)

Witness: —— ——.

STATE OF NORTH CAROLINA,
Polk County:

I, Evelyn Lott, being duly authorized to take acknowledgments of deeds, etc., in North Carolina, do hereby certify that Mrs. Addie (Mrs. Will M.) Gaines, widow, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the 5th day of November, 1930.

Signature of Officer: (Signed) Evelyn Lott, Notary Public. My commission expires Nov. 5, 1931. (Seal.)

STATE OF NORTH CAROLINA,
—— County:

I, —— ——, being duly authorized to take acknowledgments of deeds, etc., in North Carolina, do hereby certify that —— —— and his wife, —— ——, personally appeared before me this day and acknowledged the due execution of the foregoing instrument; and the said wife being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and official seal, this — day of ——, 193-.

Signature of Officer: —— ——. My commission expires —— —, ——.

[fol. 20] STATE OF NORTH CARCLINA,
Polk County:

The foregoing certificate of Evelyn Lott, Notary Public of Polk Co., N. C., is adjudged to be correct. Let the instrument, with the certificate, be registered.

Witness my hand this 5th day of November, 1930.

(Signed) Jno. A. Arledge, Clerk of Superior Court.

STATE OF NORTH CAROLINA,
—— County:

The foregoing certificate has been duly proven, as appears from the foregoing seals and certificates, which are adjudged to be in due form and according to law. Let the same with said certificate be registered.

Witness my hand this — day of ——, 193-.

——, Clerk of Superior Court.

NOTE.—The following certificate is for the exclusive use of the attorney of the Federal Land Bank of Columbia, which will be executed when the mortgage is received by the Bank, and in no instance should it be signed by the attorney of the borrower.

I, the undersigned Assistant Counsel for The Federal Land Bank of Columbia, hereby certify that, according to the documents hereinafter mentioned and the disbursement records of said Bank, this mortgage covers the property which is described in the application for the loan secured thereby, The Federal Land Bank appraiser's report or reports thereon, and the abstract or abstracts, including any continuations, of title to said property; that said mortgage has been duly executed and recorded; and that it constitutes the first lien on said property.

This 26th day of October, 1931.

(Signed) Wm. Henry Thomas, Asst. Counsel.

[fol. 21] Loan No. N97-131. State of North Carolina, County of Polk. Amortization first mortgage. Mrs. Addie (Mrs. Will M.) Gaines, Widow, to The Federal Land Bank of Columbia. Received at 9 A. M. Nov. 5, 1930; Recorded Nov. 5, 1930, in Book 38, page 358. (Signed) W. C. Hayne, Register of Deeds. Clerk's Fee .25. Register's Fee 3.50. The Federal Land Bank of Columbia.

[fol. 22] EXHIBIT "E" TO AGREED STATEMENT OF FACTS

Treasury Department—Federal Farm Loan Bureau.
Form 1328—6-16-25.

The Federal Land Bank of Columbia

Closed Loan Statement

Index No.: N 97-131.
Name of Borrower: Mrs. Will Gaines.
Name of Association: Columbus.
Address of Secretary-Treasurer: Columbus, N. C.
Application Received: 9-2-30.
Date of Appraisal: 9-23-30.
Date of Approval: 10-1-30.
Abstract Received: 10-25-30.
Date of Mortgage: 11-5-30.
Date of Closing: 11-12-30.

Amount of Loan and Interest Rate

Original Loan: $1,000.00 at 6%.
Increased Loan—Amount Approved: $— at —%. Balance Due on Original Loan: $— at —%. Amount of Additional Loan: $— at —%.

Payments and Dates

Preliminary Interest: Due Dec. 1-30. Amount $—.
Amortization Installments: Due Dec. 1 and ——. —. Amount: 10 for $100.00 each on the principal, together with 6% interest.

1. Cost to Borrower

Bank:

For Title Insurance: $2.50 per $1,000.00, $1.50.
For Title Examination by Bank: $3.50.
For Fire Insurance Premium, covering two years: $—.
For Appraisal by Bank: $5.00.
Total Bank Charges, $10.00.

Abstract:

Prepared by Attorney: ——.
[fol. 23] Regular Charges: $35.00.

Extra Charges: $—.
Examined by Attorney: ——.
Regular Charges: $——.
Extra Charges: $——.
Prepared by Abstract Company: $——.
Total Abstract Charges: $35.00.

Association:

One (1) per cent of Amount Approved: (See Note 3.)
Collected when Application made: $——.
Collected when Loan closed: $——.
Special Fee to cover cost of Appraisal (See Note 3): $——.
Total Collected by Association: $——.
Amount Refunded to Borrower: $——.
Total Association Charges: $——.
Grand Total of all Expenses in Securing Loan: $——.

2. Disposition of Association Charges

Payment of Appraisal by Association: From the one (1) per cent of the loan: $——.
Payment of Appraisal by Association: From the Special Fee Collected: $——.
Payment of Salary of Secretary-Treasurer in this Loan: $——.
Balance in Association Treasury for General Association Expenses: $——.

3. Closing Loan by Bank—Deductions—Check Forwarded for Balance

Amount of Loan: $1,000.00.
Amount of Bank Charges Deducted: $5.00.
For Preliminary Interest (See Note 4): $——.
Amount of Stock Deducted (See Note 1): $50.00.
Original Loan Deducted When Closing Increased Loan: $55.00.
Total Deductions: $——.
Amount of Check Forwarded to Attorney for Closing Loan: $945.00.

[fol. 24] 4. Closing Loan by Association—Disbursements—Check for Balance to Borrower

Paid to —— for ——: $——.
Paid to —— for ——: $——.
Paid to —— for ——: $——.
Paid to —— for ——: $——.
Paid to —— for ——: $——.
Balance Paid to Borrower: $——.
Total Disbursements: $——.

(NOTE.—This must exactly equal check forwarded.)

5. Purposes of Loan in Addition to Purchase of Stock in Association

To Purchase Land: $——.
To Purchase Equipment: $——.
To Purchase Livestock: $——.
To Build: $——.
To Make Improvements: $——.
To Liquidate Indebtedness: $945.00.
Total Amount Approved for Specified Purposes Other Than Purchase of Stock in Association: $——.

Notes

1. Stock Receipt.—A receipt for stock for amount shown hereon, issued in the name of the Association in connection with this loan, is herewith enclosed to be held in its files, the stock itself being held by the Bank under the provisions of the Farm Loan Act as collateral security for the loan. A certificate of stock for a like amount must also be issued by the Association to the borrower and held in the files of the Association as collateral security for its endorsement of the borrower's note, a stock receipt therefor being given to the borrower.

2. Closed Loan Statement.—The Closed Loan Statement will be filled out by the Bank as far as it can when it forwards the check for closing the loan. The Secretary-Treasurer or Attorney must then enter the remaining data and have it executed by the applicant in triplicate and attested [fol. 25] by the Secretary-Treasurer. One copy must be retained by the Secretary-Treasurer for the records of the

Association, one delivered to the borrower and the other returned to the Bank immediately upon the closing of the loan. Carbon sheets may be used to facilitate making the copies.

3. Association Charges.—It is important that the Closed Loan Statement show not only correctly how much was collected from the borrower by the Association, but also accurately how it disposed of the same. The borrower is clearly entitled to this information. Before the Association can collect either the one (1) per cent of the amount approved or an extra fee to cover the cost of appraisal it must first obtain the consent of the Farm Loan Board thereto.

4. Preliminary Interest.—When the preliminary interest becomes due within thirty (30) days from the issuance of its check to close the loan the borrower consents that the Bank may deduct the amount thereof from the proceeds of the loan.

The undersigned borrower certifies that he has examined the above Closed Loan Statement and finds it correct, and he hereby accepts the amount shown hereon in full settlement and discharge of all obligations of the Federal Land Bank of Columbia to him in connection with this loan.

The — day of ——, 192-.

—— ——, Applicant.

Attest:

—— ——, Secretary-Treasurer.

———

[fol. 26] EXHIBIT "F" TO AGREED STATEMENT OF FACTS

Columbia, N. C., Oct. 19, 1931.

Mr. M. R. McCown, Attorney-at-law, Tryon, N. C.

In re Federal Land Bank Loan to Mrs. Will Gaines.
N 97 - 131

DEAR SIR: Complying with your request, the following is a statement of the facts in the above matter subsequent to the receipt of the check mentioned:

The Federal Land Bank of Columbia in the due course of handling the above mentioned loan forwarded its check

for $945.00 payable jointly to P. S. Lewis, Sec.-Treas., and Mrs. Will Gaines, borrower, which check was received by said P. S. Lewis.

Upon receipt of said check P. S. Lewis telephoned to Mrs. Will Gaines and told her that he had received the check, but that the proceeds of same had to be collected and it would be several days before he would have the proceeds for disbursement. He further stated that Mrs. Will Gaines' endorsement was required before the check could be forwarded for collection, and that he could be authorized over the telephone to make this endorsement and thus save her a trip to Columbus. P. S. Lewis further stated to Mrs. Gaines that the funds derived from said check would not be available for distribution until said funds were received in Columbus in the due course of collection, and that in the meantime the Federal Farm Loan Act directed the National Farm Loan Association to receive said funds, and retain the custody of the same until disbursed. Mrs. Gaines authorized the said P. S. Lewis to endorse the said check.

Having endorsed the name of said Mrs. Will Gaines to said check, and added his own endorsement, said P. S. Lewis deposited the said check in the Polk County Bank and Trust Company to the credit of Columbus National Farm Loan Association. The proceeds of said check were [fol. 27] in due course paid to said Polk County Bank and Trust Company by its correspondents, and almost simultaneously the Polk County Bank and Trust Company closed its doors.

The Polk County Bank and Trust Company was the duly designated depository of said Columbus National Farm Loan Association and P. S. Lewis, in addition to being Sec.-Treas. of said Columbus National Farm Loan Association, was also cashier of said bank.

Several months after the closing of said bank a proposition was submitted to its depositors whereby said bank could be reopened upon the depositors agreeing not to withdraw their funds on deposit for a period of two years. This proposition was submitted to the Columbus National Farm Loan Association as to the instant funds, and the directors of said Association by resolution duly offered and adopted, authorized said fund to remain on deposit in said bank for the two-year period. A sufficient number of depositors hav-

ing assented to said proposition, the Polk County Bank and Trust Company was re-opened, and has the said funds now on deposit to the credit of Columbus National Farm Loan Association. The proposition for said funds to remain on deposit in said bank for two years was not submitted to or assented to by said Mrs. Will Gaines.

No part of said funds except $54.23 for taxes have ever been disbursed by P. S. Lewis, Sec.-Treas. of said Columbus Nat. Farm Loan Association, and the closed loan form of said Federal Land Bank of Columbia (form 1328—6-16—25) has never been completely filled out or executed.

Yours very truly, (Signed) P. S. Lewis, Sec.-Treas.
Col. Nat. Farm Loan Ass'n.

The above case was submitted to and heard before His Honor, Michael Schenk, at the April Term of Polk County Superior Court, and the following judgment rendered:

[fol. 28] IN SUPERIOR COURT OF POLK COUNTY

JUDGMENT

This cause came on to be heard before the undersigned Judge, holding the 1932 Spring Term of the Superior Court of Polk County, upon an agreed statement of facts as same appears in the record.

The attorneys of record for the parties in the cause agreed to submit to the Court the issue in the following form:

Is the mortgage executed by Mrs. Will Gaines to the Federal Land Bank of Columbia valid?

The attorneys for the respective parties further agreed that the answer to the issue submitted to the Court involves only the question of consideration for the mortgage.

After presentation of the agreed statement of facts to the Court, and the attorneys of record being heard, it is the finding of the Court, based on the facts and the law, that the mortgage executed by Mrs. Will Gaines is not a valid mortgage and is not a lien against the property described therein, except to the extent of $54.23, which amount was advanced for taxes, and

It is ordered, adjudged, and decreed that said mortgage be cancelled upon the payment of a like amount ($54.23) by the defendant to the plaintiff.

This 27th day of April, 1932.

Michael Schenk, Judge Presiding.

IN SUPERIOR COURT OF POLK COUNTY

APPEAL ENTRIES

The plaintiff in open court gives notice of appeal to the Supreme Court of North Carolina, for errors assigned and to be assigned. Parties present further notice waived. Plaintiff is allowed sixty days in which to make up and serve statement of case on appeal, and defendant allowed sixty days thereafter to make up and serve counter-case or file exceptions. Appeal bond fixed at $50.00.

[fol. 29] IN SUPERIOR COURT OF POLK COUNTY

Assignments of Error

Plaintiff having heretofore duly objected and excepted to the judgment rendered by the Court in this cause, now assigns the following errors:

(1) For that the Court erred in holding that the mortgage as appears in the record, executed by Mrs. Will Gaines to the Federal Land Bank of Columbia, was invalid, on the ground that such holding was contrary to law and the agreed statement of facts.

IN SUPERIOR COURT OF POLK COUNTY

Agreement as to Case

It is agreed by the undersigned counsel for the respective parties, that the foregoing shall constitute the record and case on appeal to the Supreme Court of North Carolina, in the above entitled cause.

J. S. Massenburg, Harry D. Reed, Attorneys for Plaintiff. M. R. McCown, Attorney for Defendant.

(Record duly certified by Clerk of Superior Court.)

A true copy.

Edward Murray, Acting Supreme Court Clerk.
(Seal of the Supreme Court of the State of North Carolina.)

[fol. 30] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

AGREEMENT AS TO EXHIBITS "A" & "B"

It is agreed by and between the undersigned counsel for the respective parties in above stated case that, because of the illegible condition of the exhibits appearing in the transcript of the record for the hearing of the case in the Supreme Court, on pages 5 to 11, inclusive, of the record, the attached abstract of the exhibits referred to shall be printed as an addendum to the transcript of the record, and shall be attached to the transcript of record for consideration of the Court, in place of or in addition to the exhibits as they appear on pages 5 to 11, inclusive, of the printed record.

This 24th day of August, 1932.

J. S. Massenburg, Harry D. Reed, Attorneys for the Federal Land Bank of Columbia. M. R. McCown, Attorney for Mrs. Will Gaines.

The essential portions of Exhibits A and B, which appear on pages 5 to 11, inclusive, of the printed record, are stated below, and it is agreed that this statement shall be printed and attached to the printed record as an addendum thereto:

[fol. 31] Exhibit A—Pages 5 to 9, Inclusive, of Record

This exhibit is Mrs. Gaines' application for a loan. It is dated August 16, 1930, is addressed to The Federal Land Bank of Columbia, and recites that the applicant, "pursuant to the provisions of the Federal Farm Loan Act," makes application through the Columbus National Farm Loan Association for a loan of One Thousand ($1,000.00) Dollars, to be secured by a first mortgage on the land described in the application, and that "Application to the As-

sociation for membership therein and subscription to its capital stock, pursuant to the provisions of the Act, are also hereby made."

$300 of the loan is desired to purchase cows to be used for dairying purposes, $650 to pay debts, and $50 to pay for stock in the National Farm Loan Association.

In the blanks provided in the application for listing all encumbrances, mortgages and liens against the land offered for security no entries are made. The application recites that the Bank is authorized to pay all existing liens out of proceeds of the loan applied for.

Attached to the application is a report of the Loan Committee of the Columbus National Farm Loan Association, reporting on the land offered as security and on the applicant, and recommending a loan in the amount of $1,000; and a certificate of the Secretary-Treasurer of the Association certifying that the Directors of the Association had approved and recommended to the Bank a loan not exceeding $1,000, and that the applicant had been admitted to membership in the Association.

On the back of the application are memoranda indicating the approval of the application by the Executive Committee [fol. 32] of The Federal Land Bank of Columbia, and in the memoranda, under the head of "Purpose of Loan," appear the following entries:

"$200	Andrews Store.
400	Farmers Fed.
200	R. Jackson.
75	W. Smith.
70	Dairy Equipment.
50	Ass'n Stk.
5	Fees.
$1,000	Total."

Attached to the application, and signed by Mrs. Gaines, is the following statement:

"In making application to the Federal Land Bank of Columbia, for a mortgage loan, I understand I am to subscribe for stock in the Columbus National Farm Loan Association of Columbus, N. C., to an amount equal to 5% of the face of the loan; that such stock may be paid for by a deduction from the proceeds of the loan when closed;

that such stock entitles its owner to participate in any dividends paid by said Association; that stockholders in said Association may be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such Association, to the extent of stock owned by them at the par value thereof, in addition to the amount paid and represented by their shares; that the estimated value of said stock at this time is less than par; and that upon payment of my loan my stock will be retired, but the association may retain the whole or any part of its par value on account of obligations of the Association existing at that time."

[fol. 33] Exhibit B—Pages 10 and 11 of Transcript

The note executed by Mrs. Gaines is dated November 5, 1930, and recites that she promises to pay to the Bank, or order, the principal sum of $1,000, with interest thereon at the rate of 6% per annum, payable annually in ten installments, each installment to include $100 on the principal, and 6% interest for one year on the entire unpaid balance of the principal of the note. The note recites that it is secured by a mortgage given by the maker to The Federal Land Bank of Columbia, and that the terms of the mortgage are made part of the note.

The note is endorsed by the Columbus National Farm Loan Association in the following words:

"The undersigned Association hereby endorses the within note and becomes liable for the payment of the indebtedness evidenced thereby in accordance with the terms thereof."

A true copy.
Edward Murray, Acting Supreme Court Clerk.
(Seal of the Supreme Court of the State of North Carolina.)

[fol. 34] IN SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1933

No. 552

Polk

FEDERAL LAND BANK OF COLUMBIA, S. C.,

v.

Mrs. WILL GAINES

Appeal by Plaintiff from Schenck, J., at April Term, 1932, of the Superior Court of Polk County. Affirmed

OPINION—Filed March 1, 1933

This is a controversy without action (C. S. 626), submitted to the Court, upon a statement of facts agreed, which are as follows:

1. The Federal Land Bank of Columbia is a Federal Land Bank chartered, organized and doing business under the provisions of an Act of the Congress of the United States known as The Federal Farm Loan Act.

2. The Columbus National Farm Loan Association is a National Farm Loan Association chartered, organized and doing business under the terms and provisions of The Federal Farm Loan Act.

3. On August 16, 1930, Mrs. Will Gaines made application through the Columbus National Farm Loan Association to The Federal Land Bank of Columbia for a loan of One Thousand ($1,000) Dollars, offering as security for the loan a mortgage on twenty-seven (27) acres of land in Polk County, North Carolina. The application was approved by the Columbus National Farm Loan Association on August 20, 1930, and on that date Mrs. Gaines was admitted to membership in said Association. The application was approved by The Federal Land Bank of Columbia on October 1, 1930. A copy of the application for the loan is attached to this statement of facts, made a part hereof, marked Exhibit A.

4. On October 2, 1930, Mrs. Gaines was advised by The Federal Land Bank of Columbia of the approval of her application for a loan, and was requested to select from a list of approved attorneys furnished her by the bank, attorneys to prepare an abstract of title for consideration of [fol. 35] the bank. Mrs. Gaines employed Messrs. Jones and Massenburg to prepare the abstract of title, and they furnished it to the bank on October 25, 1930.

5. On November 5, 1930, Mrs. Gaines executed and delivered to The Federal Land Bank of Columbia a note and mortgage for the loan in the amount of $1,000, copies of which are attached to this statement of facts, marked, respectively, Exhibits B and C, and made part hereof.

6. On November 14, 1930, The Federal Land Bank of Columbia sent to Messrs. Jones and Massenburg its check on the Commercial National Bank of Charlotte, North Carolina, dated November 12, 1930, for $945.00, payable jointly to Percy Lewis, a secretary-treasurer of the Columbia National Farm Loan Association, and Mrs. Will Gaines, with instructions to the attorneys and to the secretary-treasurer of the Columbus National Farm Loan Association for closing the loan to Mrs. Gaines. A copy of the check, with endorsements thereon, is attached to this statement, made a part hereof, marked Exhibit D. With the check was sent a closed loan statement, to be filled in by the secretary-treasurer of the Columbus National Farm Loan Association and signed by him and Mrs. Gaines. A copy of the statement as sent with the check is attached to this statement, made part hereof, and marked Exhibit E. The check represented the proceeds of the loan after deducting Fifty ($50) Dollars for Mrs. Gaines' stock in the Columbus National Farm Loan Association. Three ($3.50) Dollars and Fifty Cents for title determination fee, and One ($1.00) Dollar for title insurance premium.

7. The check referred to in the preceding paragraph was delivered by the attorneys to Percy Lewis, secretary-treasurer of Columbus National Farm Loan Association, on November 18, 1930, and was handled by him as indicated in a letter addressed by Mr. Lewis under date of October 19, 1931, to Mr. M. R. McCown, a copy of which is attached to this statement, marked Exhibit F, and made part hereof.

At the time of this transaction the Polk County Bank and Trust Company was the only bank in Columbus, North Carolina. The Polk County Bank and Trust Company was [fol. 36] open for business through Friday, November 21, 1930, but failed to open for business on Saturday, November 22, 1930.

8. No payments on the loan have been made by Mrs. Gaines to The Federal Land Bank of Columbia, although The Federal Land Bank of Columbia has demanded from Mrs. Gaines payment of the interest, which under the terms of the note executed by her was due December 1, 1930, and of the interest and the first installment of principal, which under the terms of the note were due December 1, 1931.

It appears from the letter referred to in paragraph 7 of the statement of facts agreed, that upon the receipt by him of the check payable to the order of Percy Lewis, Secretary-Treasurer of the Columbus National Farm Loan Association, and of Mrs. Will Gaines, the said Percy Lewis advised the defendant by telephone that he had received the check and that her endorsement was required before the check could be collected. The defendant thereupon authorized Percy Lewis to write her name on the back of the check, which he did. The check was then deposited in the Polk County Bank & Trust Company to the credit of the Columbus National Farm Loan Association. The check was paid by the bank on which it was drawn. No part of the proceeds of said check except the sum of $54.23 which was paid for taxes on the land conveyed by the mortgage, has been disbursed to or on the account of the defendant.

On the foregoing facts, the plaintiff contended that the note and mortgage executed by the defendant and now in the possession of the plaintiff, are valid, and that plaintiff is entitled to collect from the defendant the full amount of said note, according to its terms, and that upon default by the defendant in the payment of said note, the plaintiff has the right to foreclose the said mortgage; the defendant contended that neither the note nor the mortgage is valid, for the reason that she has received no consideration for the note.

The Court was of opinion that the note and mortgage are valid only for the sum of $54.23, the amount disbursed by the Columbus National Farm Loan Association in pay-

ment of taxes, and therefore ordered, adjudged and decreed [fol. 37] that the note and mortgage be cancelled upon the payment by the defendant to the plaintiff of the sum of $54.23.

From the judgment on the facts agreed, the plaintiff appealed to the Supreme Court.

J. S. Massenburg and Harry D. Reed for plaintiff.
M. R. McCown for defendant.

CONNOR, J.:

The transactions between the plaintiff and the defendant as disclosed by the statement of facts agreed appearing in the record were conducted in strict accord with the provisions of the Act of Congress known as the Federal Farm Loan Act. In accordance with these provisions, the defendant, who had applied for and accepted membership in the Columbus National Farm Loan Association, applied through said Association to the plaintiff for a loan of one thousand dollars, offering as security for said loan her note for one thousand dollars, secured by a mortgage on twenty-seven acres of land in Polk County, North Carolina. This application was endorsed by the Association, and approved by the plaintiff. Upon the delivery to it of the note and mortgage duly executed by the defendant, the plaintiff transmitted to the Columbus National Farm Loan Association funds to be disbursed by said Association to the defendant on account of the loan.

The said Association has disbursed only the sum of $54.23 of said funds. The balance of said funds are on deposit in the Polk County Bank & Trust Company, and are not available for closing the loan. The defendant has received no consideration for her note and mortgage, except the sum of $54.23, unless it shall be held that the Columbus National Farm Loan Association received the funds from the plaintiff as the agent of the defendant.

As we construe the provisions of the Federal Farm Loan Act, the Columbus National Farm Loan Association was not the agent of the defendant in the transactions disclosed by the statement of facts agreed. The Federal Farm Loan Act provides for the organization of National Farm Loan Associations as intermediaries between borrowers and Federal Land Banks. All applications for loans from a Fed-

eral Land Bank must be made through a National Farm [fol. 38] Loan Association. No loan can be made by a Federal Land Bank directly to the borrower. When the application for a loan has been received by a Federal Land Bank, through a National Farm Loan Association, and approved, the Act requires that funds to close the loan shall be transmitted by the Land Bank to the Association, for disbursement to the borrower.

Under the provisions of the Act, the National Farm Loan Association is a public agent, designated by the Act as the intermediary between the Bank and the borrower. It was so held in Fed. Land Bank vs. Shingler, 174 Ga. 352, 162 S. E. 815, and in Bjorkstam vs. Fed. Land Bank, 138 Wash. 456, 244 Pac. 981.

There is no error in the judgment in this case. It is affirmed.

A true copy.

Edward Murray, Acting Supreme Court Clerk.
(Seal of the Supreme Court of the State of North Carolina.)

[fol. 39] IN SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1933

No. 552

FEDERAL LAND BANK OF COLUMBIA, S. C.,

vs.

MRS. WILL GAINES

Polk County

JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court of Polk County, upon consideration whereof this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is, therefore, considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Geo. W. Connor, Justice, be certified to the said

Superior Court, to the intent that the judgment is affirmed; and it is considered and adjudged further that the plaintiff, Bank of Columbia, S. C., do pay the costs of the appeal in this Court incurred, to-wit, the sum of sixteen 15/100 dollars ($16.15), and execution issue therefor.

A true copy.

Edward Murray, Acting Clerk of the Supreme Court.

(Seal of the Supreme Court of the State of North Carolina.)

[fol. 40] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

PETITION FOR STAY OF EXECUTION

To the Honorable the Chief Justice of the Supreme Court of North Carolina:

Now comes The Federal Land Bank of Columbia, appellant in the above stated cause, by its attorneys therein, and respectfully represents to the Court:

1. That, in view of the affirmance of the judgment rendered in the above stated cause by the decision of the Supreme Court of North Carolina, filed therein on March 1, 1939, the appellant will within the time allowed by law duly petition the Supreme Court of the United States for a writ of certiorari to the Supreme Court of North Carolina to require the Supreme Court of North Carolina to certify and forward the record in the above stated cause to the Supreme Court of the United States for its review and de-
[fol. 41] termination thereof.

2. That appellant desires the issuance of an order staying the execution and enforcement of the judgment, and certification by the Clerk of the Supreme Court of North Carolina to the Superior Court of Polk County, North Carolina, of the decision of the Supreme Court of North Carolina in the above stated cause, pending the application by the appellant for the writ of certiorari and the disposition thereof by the Supreme Court of the United States.

3. That appellant, in accordance with the provisions of Section 350, Chapter 9, Title 28, U. S. C. A., offers herewith

its bond with good and sufficient corporate surety, containing the conditions prescribed by said Section 350.

Wherefore the appellant prays for an order approving and accepting the bond offered herewith and staying the enforcement and execution of the judgment in the above stated cause and the certification of the decision of the Supreme Court of North Carolina therein by the Clerk of said Court to the Superior Court of Polk County, North Carolina.

Dated this the 13th day of March, 1933.

I. M. Bailey, Raleigh, North Carolina; J. S. Massenburg, Tryon, North Carolina; Harry D. Reed, Columbia, South Carolina, Attorneys for the Appellant, The Federal Land Bank of Columbia.

[fol. 42] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

ORDER STAYING EXECUTION

The petition of The Federal Land Bank of Columbia, appellant in the above stated cause, for an order staying the execution and enforcement of the judgment, and certification of the decision, of the Supreme Court of North Carolina in the above stated cause for the purpose of enabling The Federal Land Bank of Columbia within the time allotted by law to apply for and to obtain a writ of certiorari from the Supreme Court of the United States in the above entitled cause, and the bond submitted with the petition, have been considered, and it is hereby ordered that the bond of The Federal Land Bank of Columbia, as principal, and National Surety Company, as surety, is hereby approved, and that the execution and enforcement of the judgment, and certification by the Clerk of this Court to the Superior Court of Polk County, North Carolina, of the decision, of the Supreme Court of North Carolina in the above entitled cause be and the same are hereby [fol. 43] stayed for the period allotted by law for the application by The Federal Land Bank of Columbia to the Supreme Court of the United States for a writ of cer-

tiorari in the above entitled cause, and until the cause is finally disposed of by the Supreme Court of the United States in the event of the due filing of said application by The Federal Land Bank of Columbia—all of which is in accordance with the provision of Section 350, Chapter 9, Title 28, U. S. C. A.

Dated at Raleigh, North Carolina, this the 13th day of March, 1933.

W. P. Stacy, Chief Justice of the Supreme Court of North Carolina.

Attest:

Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal.)

[fols. 44-46] Stay bond on petition for certiorari for $1,000 omitted in printing.

[fol. 47] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 48] IN SUPREME COURT OF NORTH CAROLINA, EIGHTEENTH CIRCUIT, FALL TERM, 1932

No. 552

FEDERAL LAND BANK OF COLUMBIA, Plaintiff,

vs.

Mrs. WILL GAINES, Defendant

CERTIFICATE AS TO JUDGMENT, ETC.

I, Edward Murray, Acting Clerk of the Supreme Court of North Carolina, do hereby certify that final judgment was rendered and entered by said Court in above entitled cause on March 1, 1933; that said judgment was adverse to the plaintiff (appellant) in said cause, and sustained the judgment of the Superior Court therein; that a copy of said judgment is included in the transcript of the record

in said cause furnished to attorneys for plaintiff for filing in the Supreme Court of the United States; that said judgment was a final disposition of said cause in the Supreme Court of North Carolina; that no motion for a rehearing of said cause was filed in this Court, and that the time for filing a motion for rehearing has expired.

Witness my official signature as Acting Clerk of the Supreme Court of North Carolina, and the seal of said Court, this 15th day of May, 1933.

Edward Murray, Acting Clerk Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 49] IN SUPREME COURT OF THE UNITED STATES

STIPULATION RE OMISSION OF EXHIBITS

It is hereby stipulated by and between the respective parties hereto, through the undersigned, their attorneys, that because of the illegible condition of Exhibits A, B and D, as they appear on pages 5 to 11, inclusive, and page 21, of the certified transcript of the proceedings in the Supreme Court of North Carolina, filed in the Supreme Court of the United States, said exhibits shall be omitted by the Clerk of this Court in printing the record for consideration by this Court.

May 15, 1933.

I. M. Bailey, Post Office Address Raleigh, North Carolina; J. S. Massenburg, Post Office Address Tryon, North Carolina; Harry D. Reed, Post Office Address Columbia, South Carolina, Attorneys for Petitioner. M. R. McCown, Post Office Address Tryon, North Carolina, Attorney for Respondent.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4054)

FILE COPY

MAY 31 1933
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 112

THE FEDERAL LAND BANK OF COLUMBIA,
A CORPORATION, PETITIONER,

vs.

MRS. WILL GAINES, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

I. M. BAILEY,
Raleigh, North Carolina,
Attorney for Petitioner.

J. S. MASSENBURG,
Tryon, North Carolina.
HARRY D. REED,
Columbia, South Carolina.
Of Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No.

THE FEDERAL LAND BANK OF COLUMBIA,
A CORPORATION, PETITIONER,

vs.

MRS. WILL GAINES, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

May it please the Court:

The petition of The Federal Land Bank of Columbia respectfully shows to this Honorable Court:

Petitioner, hereinafter referred to as the bank, is one of twelve Federal land banks, chartered by the Federal Farm Loan Board pursuant to the provisions of the Federal Farm Loan Act (12 U. S. C. Ch. 7), and operating under the provisions of said act. This bank is authorized to and does lend money on the security of

qualified first mortgages on farm lands situated in the States of North Carolina, South Carolina, Georgia, and Florida.

On November 5, 1930, the respondent, hereinafter referred to as the borrower, executed and delivered to the bank her promissory note in the amount of $1,000, secured by a duly qualified first mortgage on certain farm property owned by her in the State of North Carolina.

This case involves the validity of the borrower's note and mortgage, which has been challenged on the ground of lack of consideration.

The facts of the case are set forth in an agreed statement at pages two to four of the record. Briefly, the facts are as follows: The borrower applied to the bank for a loan, making application through a national farm loan association chartered, organized, and doing business under the terms of the Federal Farm Loan Act. The application was granted by the bank upon the favorable recommendation of the association. The mortgage and promissory note were executed by the borrower in favor of the bank, were indorsed by the national farm loan association through which the borrower's application had been made, and the mortgage was recorded as a first lien against her land. The bank drew its check for the net proceeds of the loan, payable to the joint order of the borrower and the secretary-treasurer of the association. The secretary-treasurer deposited the check in a commercial bank to the association's account, having first obtained authority from the borrower to indorse her name thereon for the purpose of collecting the funds and disbursing them. A

small amount of the proceeds of the check was disbursed by the secretary-treasurer for the borrower's account in payment of taxes on her farm; and the balance was impounded in the commercial bank upon the closing of that institution three days after the deposit was made.

The Supreme Court of North Carolina sustained the contention of the borrower that, in the circumstances above related, the borrower received no consideration for her note and mortgage, except the sum of $54.23, which was disbursed for her account in payment of a tax lien.

The questions involved in this case are the following:

1. Whether consideration for the note and mortgage had passed from the Federal land bank upon payment of the bank's check for the amount of the loan evidenced and secured thereby, such check having been duly indorsed by the payees who were respectively the maker and indorser of the mortgage note.

2. Whether, under the Federal Farm Loan Act, a national farm loan association is the agent of the Federal land bank for the transmission of the proceeds of a loan to the borrower.

3. Whether a national farm loan association, in receiving and handling sums transmitted by a Federal land bank in connection with the closing of a mortgage loan, receives and handles such sums for the account of the borrower or as a "public agent."

4. Whether a mortgage executed and delivered to a Federal land bank is impaired or invalidated due to the loss of the sums transmitted

in consideration of such mortgage, while such sums are in the hands of the indorsing national farm loan association, which has receipted for the same.

The questions above outlined involve an interpretation of the provisions of the Federal Farm Loan Act respecting loans made by Federal land banks through national farm loan associations. These questions have never been submitted to or passed upon by this Court.

The ruling of the Supreme Court of North Carolina with respect to the issues of law in this case is contrary to a proper construction of the Federal Farm Loan Act and to the decisions of the highest courts of States other than North Carolina that have passed upon the question. For the reasons outlined below, the decision of these questions is of fundamental importance to the petitioning bank and to eleven other Federal land banks, which are organized and operated under the same Federal statute, and which serve all States of the Union by lending money on farm mortgage security in the States of their respective districts.

From the time of their organization in 1917 until March 4, 1933, the Federal land banks were restricted by law from making loans in the continental United States except (1) through, and upon the indorsement of, national farm loan associations and (2) through, and upon the indorsement of, duly qualified agents. With the exception of a comparatively small number of loans made in the early days of the system by the Federal Land Bank of St. Paul, all loans of the Federal

land banks have, up to the present time, been made through national farm loan associations. The total volume of such loans from organization to December 31, 1932, as reflected by the sixteenth annual report of the Federal Farm Loan Board, was 530,291, aggregating $1,723,495,414.87, of which the petitioning bank has made a total of 39,977 loans, aggregating $90,175,815.00. The number of associations involved in the closing of these loans was, for the entire United States, 4,979, of which 4,649 remain in existence; 501 of the existing associations being located in the States served by the petitioning bank.

These national farm loan associations are cooperative credit corporations, chartered by the Federal Farm Loan Board under the provisions of the Federal Farm Loan Act, and operating under the supervision and regulation of the Board.* Each association is authorized to do business within a limited territory, and its membership is restricted, under the act, to farmers who are borrowers from the Federal land bank of its district. The procedure involved in making a loan "through a national farm loan association" is prescribed by the Act. Under this procedure, a farmer applies for membership in the association, and for a loan upon the indorsement of the association. The as-

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*For the purpose of this petition, it appears unnecessary to refer to the abolition of the Federal Farm Loan Board, and the transfer of its functions to the Farm Credit Administration, by the Executive Order of March 27, 1933, effective May 27, 1933.

sociation then investigates the character and solvency of the applicant, and the value of his land which is tendered as security, and makes or refuses to make a favorable recommendation to the bank respecting the granting of the loan. Without the association's favorable recommendation, the bank may not make a loan to the applicant.

The Act requires that the farmer-borrower who obtains a loan from a Federal land bank through a national farm loan association shall purchase stock in the association in the amount of five per cent of his loan, and as a stockholder shall become individually responsible for all contracts, debts, and engagements of his association to the extent of the amount of stock owned by him at the par value thereof, in addition to the amount paid in and represented by his shares. The association in turn subscribes to an equal amount of stock in the Federal land bank and becomes liable for the loan by indorsement. The borrower's stock is held by the association as collateral, and the association's stock in the Federal land bank is held by the bank as collateral.

Among the provisions respecting the functions and powers of a national farm loan association, Section 11 of the Federal Farm Loan Act (12 U. S. C. 761) contains the following:

> "To receive from the Federal land bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under Section 12 of this Act."

Under the provisions of Section 7 of the Federal Farm Loan Act (12 U. S. C. 714), it is the duty of the secretary-treasurer of a national farm loan association "to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, *to pay over to borrowers all sums received for their account from the Federal land bank upon first mortgage as in this Act prescribed,* and to meet all other obligations of the association subject to the orders of the board of directors and in accordance with the by-laws of the association." (Italics ours.)

Under a proper construction of these and other provisions of the Federal Farm Loan Act, the association is the agent of the borrower, acting for him in receiving for his account sums which are transmitted to it by the Federal land bank. The Supreme Court of North Carolina has held, however, that the association is not the agent of the borrower, but is a public agent, designated by the Act as an intermediary between the borrower and the bank; that the bank is required by the Act to transmit all funds for closing loans to the association; and that the bank has not fulfilled its obligation under the loan contract by delivering the loan proceeds to this "intermediary."

Even though the Supreme Court of North Carolina be correct in holding that the association is a statutory "intermediary," and is not acting as agent of the borrower, it appears that the Court has failed to apply the following general rule of law: Where two obligors have agreed that the consideration for their undertaking should be paid to one of such obligors, to be disbursed by the latter in accordance with the conditions

of the entire contract, consideration for the obligation has passed upon delivery of the same to the designated obligor. Under the provisions of the Federal Farm Loan Act, the national farm loan association is a co-obligor in connection with all loans made to its members by a Federal land bank. In other words, each loan made through an association constitutes a three-party contract: Between the bank (a Federal corporation) on the one hand, and the borrower, together with the association (a Federal corporation) on the other hand. This interpretation of the relationship between the three parties to a loan contract, made pursuant to the provisions of the Federal Farm Loan Act, has been sustained by the courts in the following cases:

Bjorkstam v. *The Federal Land Bank of Spokane*, 244 Pac. 981, 136 Wash. 446;

Holvick v. *Black*, 221 N. W. 71, 57 N. D. 270;

Whitaker v. *Fulton*, 17 S. W. (2d) 1079 (Tex. Civ. App.);

The Federal Land Bank of St. Paul v. *Byrne*, 237 N. W. 797 (N. D., 1931);

The Federal Land Bank of Omaha v. *Omaha National Bank of Omaha*, 225 N. W. 471, 118 Nebr. 489;

The Federal Land Bank of Columbia v. *Shingler, et al.*, 174 Ga. 352, 162 S. E. 815.

The petitioning bank avers that the Supreme Court of North Carolina erred in deciding that no consideration had passed for the note and mortgage in suit; and if this petition be granted, petitioner will develop the following points: (1) that the court should have

applied to the case the ordinary rule that consideration passed upon the payment of the check transmitted by the lending bank, following the indorsement of that check with the borrower's name by one authorized to do so; (2) that there is nothing in the Federal Farm Loan Act which, as the court appeared to think, precludes the application of the rule just stated, in the case of a check drawn by a Federal land bank to the order of a borrower and an indorsing national farm loan association; and (3) that even if the borrower had not been designated co-payee of the check transmitted by the bank, delivery of the loan proceeds to the indorsing national farm loan association would have constituted complete fulfillment of the bank's obligation under the loan contract, both by reason of the provisions of the Federal Farm Loan Act and under the general rules of law.

The interpretation of the questions involved in the instant case is of particular importance to the petitioning bank and to all Federal land banks at the present time for the reason that the Emergency Farm Mortgage Act of (May 12) 1933, contemplates the immediate expansion of the activities of these banks to the extent of $2,000,000,000 in additional farm mortgage financing operations.

The funds to be used by the banks in this tremendous program of refinancing the nation's farm mortgage debt are to be obtained, under the new law, by the issuance of bonds which are to be fully and unconditionally guaranteed as to interest payment by the Government of the United States.

It is provided that, except in areas where the banks find it necessary to make direct loans pursuant to the limited authority granted under the Emergency Farm Mortgage Act of 1933, these refinancing operations will be accomplished by means of refunding loans made through and indorsed by national farm loan associations.

In order that the banks may issue bonds and obtain funds for the purpose of refinancing farm mortgages, it is essential that the banks deposit eligible collateral security, at least equal in amount to the new bonds. This collateral must, as a practical matter, consist of qualified first mortgages on farm lands. It will be impossible for the banks to proceed with the program which Congress has outlined unless they are able to make the necessary collateral deposits.

Under the rule stated by the Supreme Court of North Carolina, a bank would have to deliver to the association the consideration for each refunding loan made through a national farm loan association. The association, though organized, operated, and controlled by borrowers for their mutual benefit, would be deemed a "public agent, designated by the Act as the intermediary between the bank and the borrower." Under the North Carolina Court's decision, the bank would deliver the loan funds to the association, but such delivery would not constitute consideration for the mortgage until the last dollar of the funds had been disbursed by the association. Even if the bank should designate the borrower as co-payee of a check representing loan funds, such designation would be regarded,

as in the instant case, as mere surplusage. Therefore, it would be necessary for the bank to utilize the services of a "public agent" not responsible to it and over which it had no control.

Therefore, in order that the petitioning bank and the other eleven Federal land banks may be in position effectually to operate their greatly enlarged program of farm mortgage operations which is contemplated in the new legislation above referred to, it is essential that the relations between such banks and the several associations of their districts be clearly defined.

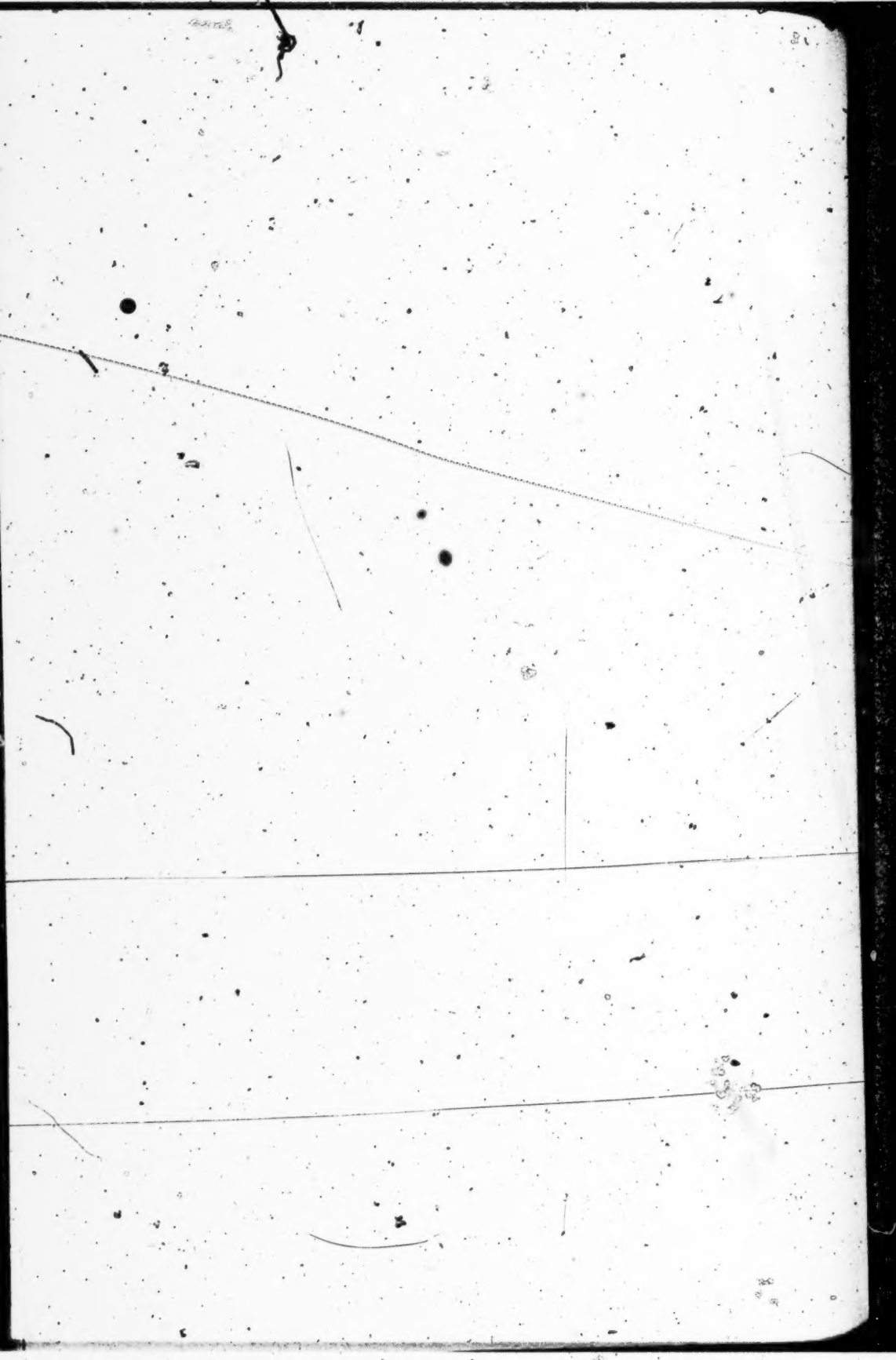
For the convenience of the Court, this petition is accompanied by supply of a document issued by the Federal Farm Loan Board known as "Circular No. 20," which contains the Federal Farm Loan Act as amended to July 16, 1932. An amendment to the Act, approved March 4, 1933, has been slipped into this circular, immediately behind the cover sheet. In order that the Court may have before it in convenient form copies of the Emergency Farm Mortgage Act of (May 12) 1933, petitioner is also furnishing a supply of Public Law No. 10, Seventy-third Congress, Title II of which has been designated as "The Emergency Farm Mortgage Act of 1933."

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of North Carolina, commanding that court to certify and to send to this Court for its review and determination, on a day certain, to be therein named, a full and complete transcript of the record and all proceedings

in the case, numbered and entitled on its docket No. 552, *Federal Land Bank of Columbia, South Carolina*, Plaintiff, v. *Mrs. Will Gaines*, Defendant, and that the said judgment of the Supreme Court of North Carolina may be reviewed by this Honorable Court, and that petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

THE FEDERAL LAND BANK
OF COLUMBIA,
By F. M. BAILEY,
Raleigh, North Carolina,
Attorney for Petitioner.

J. S. MASSENBURG,
Tryon, North Carolina.
HARRY D. REED,
Columbia, South Carolina.
Of Counsel for Petitioner.



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA,
PETITIONER,

vs.

MRS. WILL GAINES, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA.

BRIEF ON BEHALF OF PETITIONER.

I. Statement of Case.

1. *Nature of Proceeding Below.*

This was a controversy without action between The Federal Land Bank of Columbia, hereinafter called the bank, as plaintiff, and Mrs. Will Gaines, hereinafter called the borrower, as defendant, under Section 626, Consolidated Statutes of North Carolina (Section 626, Michie's North Carolina Code of 1931). The controversy was submitted to

the Superior Court of Polk County, North Carolina, upon an agreed statement of facts (R. 2-4), to which certain Exhibits were annexed.

2. *History of Case Below.*

The question submitted upon the agreed statement of facts was whether there was consideration for the real estate mortgage executed and delivered to the bank by the borrower through the Columbus National Farm Loan Association, pursuant to the provisions of the Federal Farm Loan Act (Title 12, Chap. 7, U. S. C.).

The Superior Court of Polk County, North Carolina, rendered and entered a judgment (R. 18) that the mortgage was not a valid mortgage and was not a lien against the property described therein, except to the extent of $54.23, representing an amount paid for taxes; and ordered, adjudged and decreed that the mortgage be canceled upon payment of $54.23 by the borrower to the bank.

The bank duly appealed to the Supreme Court of North Carolina from the judgment rendered and entered by the Superior Court of Polk County, North Carolina. After hearing the appeal, the Supreme Court of North Carolina, upon an opinion filed by it on March 1, 1933 (R. 23), rendered a decision affirming the judgment of the lower court. An order, staying execution, signed by the Chief Justice of the Supreme Court of North Carolina, on March 13, 1933, has been filed in accordance with Section 350, Chapter 9, Title 28, U. S. C. (R. 29).

The opinion of the Supreme Court of North Carolina (R. 23) was filed on March 1, 1933, and is reported in 204 N. C. Reports, 278, 167 S. E. 856.

3. *Jurisdiction of This Court.*

The jurisdiction of this Court is invoked under Section 344(*b*), Title 28, U. S. C. (Judicial Code, Section 237). The

titles, rights, privileges and immunities specially set up and claimed by both parties to the cause are based upon and governed by a statute of the United States: that is, the Federal Farm Loan Act. The Supreme Court of North Carolina, the highest court of that State, has rendered a final judgment in this cause (R. 27).

4. *The Facts.*

On August 16, 1930, the borrower made written application (R. 20) through the Columbus National Farm Loan Association to the bank for a loan of $1,000, offering as security for the loan a mortgage on 27 acres of land in Polk County, North Carolina. The application was approved by the Columbus National Farm Loan Association on August 20, 1930, and on that date Mrs. Gaines was admitted to membership in said association. The application was approved by the bank on October 1, 1930. She employed Messrs. Jones and Massenburg as attorneys to prepare an abstract of title to her land, and the abstract was given to the bank on October 25, 1930.

On November 5, 1930, the borrower executed and delivered to the bank a note (R. 22) and mortgage (R. 4) for the loan in the amount of $1,000. The note was indorsed by the Columbus National Farm Loan Association in the following words: "The undersigned association hereby indorses the within note and becomes liable for the payment of the indebtedness evidenced thereby in accordance with the terms therof (R. 22).

On November 14, 1930, the bank sent to Messrs. Jones and Massenburg its check on the Commercial National Bank of Charlotte, North Carolina, dated November 12, 1930, for $945.00, payable jointly to Percy Lewis, Secretary-Treasurer of the Columbus National Farm Loan Association, and the borrower, with instructions to the attorneys and to the

secretary-treasurer of the Columbus National Farm Loan Association for closing the loan to Mrs. Gaines. With the check was sent an itemized statement, designated "Closed Loan Statement" (R. 13), to be filled in by the secretary-treasurer of the Columbus National Farm Loan Association and signed by him and the borrower. The check represented the net proceeds of the loan after making certain deductions, the propriety of which are not disputed. The check was delivered by the attorneys to Percy Lewis, Secretary-Treasurer of Columbus National Farm Loan Association, on November 18, 1930. Lewis indorsed the borrower's name on the check by her parol authority. The right of the secretary-treasurer to indorse for the borrower pursuant to this authorization has at no time been questioned and is not an issue in this case. Lewis also indorsed his own name as secretary-treasurer of the Columbus National Farm Loan Association and deposited the check in the Polk County Bank and Trust Company of Columbus, North Carolina, to the credit of the Columbus National Farm Loan Association, the trust company being the duly designated depositary of the association. The check was paid by the Commercial National Bank of Charlotte, upon which it was drawn, on November 19, 1930, and the proceeds were in due course paid to the Polk County Bank and Trust Company by its correspondents. The Polk County Bank and Trust Company failed to open for business on November 22, 1930. With the exception of $54.23 which was paid out by Lewis for taxes on the borrower's land at the time of the bank's closing, the balance of the proceeds of the loan were on deposit. At the time of this transaction the Polk County Bank and Trust Company was the only bank in Columbus, North Carolina.

No payments on the loan have been made by the borrower to the bank, although the bank has demanded from the borrower payment of the interest, which under the

terms of the note executed by her was due December 1, 1930, and of the interest and the first installment of principal, which were due December 1, 1931.

II. Questions Presented.

The first question stated below arises under the general law, and will be discussed briefly immediately following the enumeration of the questions presented in this case. The remaining questions involve interpretations of the Federal Farm Loan Act, and will be discussed at subsequent passages of this brief.

1. Whether consideration for the note and mortgage had passed from the Federal land bank upon payment of the bank's check for the amount of the loan evidenced and secured thereby, such check having been duly indorsed by the payees who were respectively the maker and indorser of the mortgage note.

2. Whether, under the Federal Farm Loan Act, a national farm loan association is the agent of the Federal land bank for the transmission of the proceeds of a loan to the borrower.

3. Whether a national farm loan association, in receiving and handling sums transmitted by a Federal land bank in connection with the closing of a mortgage loan, receives and handles such sums for the account of the borrower or as a "public agent."

4. Whether a mortgage executed and delivered to a Federal land bank is impaired or invalidated due to the loss of the sums transmitted in consideration of such mortgage, while such sums are in the hands of the indorsing national farm loan association, which has receipted for the same.

III. Payment of Bank's Check as Consideration for Mortgage.

Question 1:

Whether consideration for the note and mortgage had passed from the Federal land bank upon payment of the bank's check for the amount of the loan evidenced and secured thereby, such check having been duly indorsed by the payees who were respectively the maker and indorser of the mortgage note.

If the Federal Farm Loan Act were not involved in this case, and the parties were ordinary mortgagor and mortgagee, there would be no question that consideration had passed for the note and mortgage, in view of the facts above stated. It is undisputed that a check was delivered by the mortgagee, payable to the order of the mortgagor and another, in the full amount requisite to furnish consideration for the mortgage. It is admitted that this check was duly indorsed, the mortgagor's name having been indorsed thereon by her authority, and the co-payee's having been indorsed in person. It is admitted that subsequent to such indorsement, the check was placed on deposit by the holder thereof, and the proceeds thereof duly transmitted to the depositary bank for the account of such depositor.

It is unnecessary to review the authorities which hold that where a check is delivered to a creditor, although without any agreement or consent on his part to receive it as absolute payment, and such check is in fact paid in due course, the debt is discharged as of the date the check was received; also that the negotiation of a check by the payee to whom it has been delivered, or the deposit of it in a bank as money, renders such check an absolute payment and discharges the original indebtedness. These principles, with

respect to transactions by parties operating under general rules of law, are undisputed, and it is deemed unnecessary to cite authorities in support thereof.

The decision that consideration had not passed for the mortgage in suit is based apparently upon the proposition that the Federal Farm Loan Act, by its terms, establishes special rights and liabilities as between the parties to this mortgage, and removes the question of consideration from the operation of the general law.

In subsequent portions of this brief, we shall discuss the provisions of the Federal Farm Loan Act which are applicable to the case at bar, in an endeavor to show that the Act does not operate to alter this rule, in the case of the delivery of consideration for a mortgage executed in favor of a Federal land bank.

IV. History of Federal Farm Loan Act.

1. *Circumstances Attending Passage of Act.*

It is believed that a brief review of the history and circumstances surrounding the adoption of the Federal Farm Loan Act will aid the Court in getting a complete picture of the origin and purpose of the Act, which in turn will be of assistance in interpreting particular provisions thereof.

For a number of years prior to the passage of the Act (1916) there had been an insistent demand that Congress should provide a rural credit system which would supply the necessary capital for agricultural development. Agriculture as an industry was in need of capital at low rates of interest in order to keep pace with other lines of business that were well organized and well financed. The ordinary commercial banking institutions were willing to extend credit to individual business concerns properly or-

ganized and with credit of a known quantity, with reasonable assurance that the obligations would be met. Agriculture, on the other hand, was conducted in most cases by individual farmers, each in his individual way, and each agricultural loan presented a distinct problem for the commercial banker which had to be investigated separately. Consequently the problem which presented itself to Congress was how to provide a means of furnishing the necessary credit on a large scale to farmers on the security of farm mortgages.

The papers and periodicals of the day were devoting much space to the rural credit systems of Europe. In 1913 the United States Commission, appointed by the President, in conjunction with a commission working under the auspices of the Southern Commercial Congress, made a tour of Europe for the purpose of studying these systems. The report of the United States Commission was published as Senate Document No. 204, 63d Congress, 1st session. At the close of the 63d Congress, a joint committee of the House and Senate was appointed to make further investigation of the subject and to report back a bill for the consideration of the 64th Congress. The report of this committee, Document No. 494, 64th Congress, contains a draft of a bill recommended by the committee which, in the main, is the Federal Farm Loan Act as we know it.

The bill recommended in this report was introduced in each House, and referred by each House to its Banking and Currency Committee, and the reports of the respective committees were substantially similar.

The plan incorporated in the bill, which became the Federal Farm Loan Act, is the establishment of a system of twelve cooperative farm mortgage banks, in order to provide a medium through which investors could purchase

bonds collaterally secured by large numbers of farm mortgages.

The "primary considerations in devising such a system," as stated in the Report of the Senate Committee on Banking and Currency (Report No. 144, 64th Congress, 1st Session), are:

"1. Absolute safety and attractive income to the investor.

"2. Low interest rates, long-term mortgages, and amortization payments for the farmer.

"3. Low cost of administration.

"4. Simplicity of organization and operation.

"5. Adaptability to every part of the country.

"6. Stimulation to the cooperative spirit."

With respect to this plan, the report of the Senate Committee states in part:

"Difficulty of Securing Capital.

"The farmer applies to the nearest bank for a loan and offers his farm as security. The banker makes excuses. He doesn't know the farmer; he doesn't know the value of his farm; he doesn't like to tie his demand deposits up in long-term loans; his commercial customers, who carry a substantial line of deposits, have the first claim. These excuses are well founded."

"Money Seeking Long-term Investment.

"Of money seeking long-term investment at low rates there is an abundant supply. It includes the ordinary savings of the schoolteacher, clerk, minister, and wage earner; the proceeds of life insurance in the hands of widows and other beneficiaries; funds belonging to estates, minors, and wards in chancery in the hands of

executors, guardians, and trustees; funds of insurance companies, benevolent orders, and societies of various kinds; endowments of colleges, hospitals, museums, and other institutions; and assets to be invested by receivers, courts, and governments. The aggregate of these is enormous. They require an investment that is absolutely safe and reasonably liquid in the sense that it may be converted into cash upon moderate notice; in other words, that it may find a ready market. A safe investment of this character need not carry a high rate of interest."

"Government control of the system is assured by the creation of a non-partisan Federal farm-loan board, consisting of the Secretary of the Treasury and four members appointed by the President for terms of 8 years each and paid from the Public Treasury. (Section 3.)

"Loans are made to farmers by 12 or more Federal land banks, each operating in a separate district and having a capital of not less than $500,000. If the full amount is not subscribed from private sources, the Government subscribes for as much as may be necessary to make up the required amount. Provision is made for returning the Government subscription after the land banks are firmly established. (Sections 4 and 5.)

"In order to secure intimate touch with the borrowers, it is provided that the land banks shall make loans to farmers through local associations of borrowers, called national farm loan associations. These associations do not conduct a banking business. Their operations are very simple. They admit members who desire to borrow; their directors and loan committees pass on the value of the security and the character of the borrower. Every borrower takes stock in the farm loan association to the amount of 5 per cent of the face of his loan. This amount is subscribed by the association to the stock of the land bank, thus providing for a capital proportionate to the amount of loans, approximating 1 to 20." (Sections 7 and 8.)

The following statement is found in the report of the House Committee on Banking and Currency (Report No. 630, 64th Congress, 1st Session):

> "It will be observed that the national-farm loan associations and the Federal farm-land banks *constitute a system of rural credit essentially cooperative.* Every borrower through a farm-loan association must be a stockholder in that association to the extent of 5 per cent of his loan. Incidentally it may be mentioned that his stock subscription need not be paid in cash but may be included as a part of his loan. * * * Except for the stock held by borrowers through agents, the entire stock of the land banks will ultimately be held by the various national farm-loan associations. * * * There is every assurance that the farmers will avail themselves of the opportunity to build up this great cooperative system. The possibilities of cooperation among farmers in the United States can be estimated from what has been already accomplished." (Italics added.)

Recent Developments.

Subsequent to the entry of the final judgment in this cause the Federal Farm Loan Board was abolished and its functions and duties were transferred to the Farm Loan Commissioner, subject to the jurisdiction and control of the Farm Credit Administration, pursuant to an Executive Order of the President of the United States (No. 6084), dated March 27, 1933, effective sixty days thereafter, which order reads in part as follows:

> "The functions of the Secretary of the Treasury as a member of the Federal Farm Loan Board, and the offices of the appointed members of the Federal Farm Loan Board, except the office of the member designated as farm loan commissioner, are abolished, and all the powers and functions of the Federal Farm Loan Board

> are transferred to and vested in the farm loan commissioner, subject to the jurisdiction and control of the Farm Credit Administration as herein provided."

Subsequent to the effective date of the Executive Order just above referred to, the name of the office of Farm Loan Commissioner was changed to that of Land Bank Commissioner by an Act approved June 16, 1933 (Sec. 80, Farm Credit Act of 1933).

In view of the fact that the Farm Loan Act has not been rewritten since the issuance of the Executive Order of March 27, the passage of the Emergency Farm Mortgage Act, approved May 12, 1933, and the Farm Credit Act of June 16, 1933, we have not undertaken to substitute the name of the Farm Credit Administration for the Farm Loan Board wherever the latter is referred to in the Federal Farm Loan Act. Therefore, for the purposes of this case, and for the convenience of the Court, reference will be made to the Federal Farm Loan Board rather than to the Farm Credit Administration.

V. Pertinent Provisions of Federal Farm Loan Act.

Mention has been made earlier in this brief to the fact that the mortgage in suit was executed to secure a loan "made through a national farm loan association". The decision of this case turns upon an interpretation of these words, which are used in the Federal Farm Loan Act, and which summarize the various provisions relative to loans of this character.

1. *Provisions Relative to Federal Land Banks.*

It is provided in Section 14 of the Act (12 U. S. C., Section 791) that—

> "No Federal land bank shall have power— . . . To loan on first mortgage except through national farm

loan associations as provided in Sections 7 and 8 of this Act, or through agents as provided in Section 15 [or direct to borrowers as provided in Section 8]."

The words in brackets are added to this section by the Act of March 4, 1933, which made provision for direct loans to borrowers in circumstances which did not obtain in the instant case, and would not have been applicable thereto even if the amendment had been in effect at the time this case arose.

The Federal Farm Loan Act also provides, at Section 13 (12 U. S. C., Section 781), that—

"Every Federal land bank shall have power, subject to the limitations and requirements of this Act . . .

"To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the Federal land bank district within which it is organized or for which it is acting."

2. *Provisions Relative to National Farm Loan Associations.*

Sections 7 and 8 of the Act (12 U. S. C., Sections 711-745) relate to the organization and operation of national farm loan associations, and to the closing of loans through such associations. Section 7 provides that ten or more natural persons who are the owners, or about to become the owners of farm land qualified as security for a mortgage loan under the Act, may unite to form a national farm loan association, which association may be granted a charter by the Federal Farm Loan Board. After the granting of a charter, a national farm loan association is a corporation having limited powers, as prescribed by the Act.

The management of its affairs is in the hands of a board of directors elected by the member shareholders; and its officers comprise a president, a vice president and a secretary-treasurer, chosen by the directors. All officers and

directors except the secretary-treasurer must be members of the association. Membership is confined to natural persons who are borrowers on farm land mortgages from the Federal land bank of the district.

The secretary-treasurer of a national farm loan association is its chief executive officer, under section 7 of the Act (12 U. S. C., Section 714). It is his duty "to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, *to pay over to borrowers all funds received for their account from the Federal Land Bank upon first mortgage as in this Act prescribed* [italics ours], and to meet all other obligations of the association subject to the orders of the board of directors and in accordance with the by-laws of the association"; and, "acting under the direction of the national farm loan association, to collect, receipt for and transmit to the Federal Land Bank payments of interest, amortization installments or principal arising out of loans made through the association." He is the custodian of the securities, records, papers, certificates of stock, and all documents relating to or bearing upon the conduct of the affairs of the association. He is required to furnish a suitable surety bond for the proper performance of the duties imposed upon him under the Act, to make quarterly reports to the Federal Farm Loan Board, to furnish to the Board information regarding the condition of the association, to carry out all duly authorized orders of the Federal Farm Loan Board, to assure himself that the loans made through the association of which he is an officer are applied to the purpose set forth in the application of the borrower as approved, to report to the land bank of the district any failure of a borrower to comply with the terms of his application or mortgage, and to ascertain and report to the

bank the amount of any delinquent taxes on land mortgaged to the bank.

Among the enumerated powers of a national farm loan association (Section 11, Federal Farm Loan Act; 12 U. S. C. Section 761) are:

> "First. To indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal Land Bank of its district.
>
> "Second. *To receive from the Federal Land Bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under Section* 12 *of this Act.* (Italics added.)
>
> "Third. To fix reasonable initial charges to be made against applicants for loans and to borrowers in order to meet the necessary expenses of the association: *Provided,* that such charges shall not exceed amounts to be fixed by the Farm Loan Board, and shall in no case exceed 1 per centum of the amount of the loan applied for".

Section 7 (12 U. S. C. Section 720) provides that—

> "Upon receipt of its charter such national farm loan association shall be authorized and empowered to receive fro mthe Federal land bank of the district sums to be loaned to its members under the terms and conditions of this Act."

Section 7 further provides (12 U. S. C. Section 721) that—

> "*Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal land bank of its district* it shall subscribe for capital stock of said land bank to the amount of 5 per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land

bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and it shall be so paid off and retired upon full payment of the mortgage loan. In such case the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued." (Italics added.)

Section 8 provides (12 U. S. C. Section 733) that—

"No persons but borrowers on farm land mortgage shall be members or shareholders of national farm loan associations. Any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall subscribe for shares of stock in such farm loan association to an amount equal to 5 per centum of the face of the desired loan, said subscription to be paid in cash upon the granting of the loan. If the application for membership is accepted and the loan is granted, the applicant shall, upon full payment therefor, become the owner of one share of capital stock in said loan association for each $100 of the face of his loan, or any major fractional part thereof. Said capital stock shall be paid off at par and retired upon full payment of said loan. Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding."

Section 25 of the Act (12 U. S. C. Section 921) provides as follows:

"If there shall be default under the terms of any indorsed first mortgage held by a Federal land bank

> under the provisions of this Act the national farm loan association through which said mortgage was received by said Federal land bank shall be notified of said default. Said association may thereupon be required, within 30 days after such notice, to make good such default, either by payment of the amount unpaid thereon in cash or by the substitution of an equal amount of Federal farm loan bonds, with all unmatured coupons attached."

Under the last quoted provision it is apparent the association and its members are joint obligors for each mortgage loan "made through a national farm loan association"; and that the association is not a disinterested "public agent" acting as "intermediary," but a party to the transaction, having secured for its member a loan from the Federal land bank and having become absolutely liable with its member for the repayment of such loan.

VI. Effect of Lower Court's Interpretation of Federal Farm Loan Act.

The Supreme Court of North Carolina treated this case as if the land bank had paid the loan funds to the national farm loan association, without including the borrower as a co-payee of the check. Apparently the court regarded the inclusion of the borrower's name as of no substantive importance, and determined at the outset that the effect of the transaction was a delivery to the association. The remainder of this brief, therefore, will be addressed to the merits of the court's decision, based upon the premise which it adopted.

The court below placed the following interpretation upon the applicable provisions of the Federal Farm Loan Act, which have been reviewed above:

> "No loan can be made by a Federal Land Bank directly to the borrower. When the application for a

loan has been received by a Federal Land Bank, through a National Farm Loan Association, *the Act requires that funds to close the loan shall be transmitted by the land bank to the association, for disbursement to the borrower.*

"Under the provisions of the Act, *the National Farm Loan Association is a public agent, designated by the Act as intermediary* between the bank and the borrower." (Italics added.)

Analysis of the lower court's decision leads to the inevitable conclusion that it must have regarded the association as agent of the bank, for the purpose of disbursing the loan funds in question. If the Court's language be taken literally, without this interpretation of its effect, it would mean that the association was regarded as an irresponsible entity, acting as agent for neither party, to which large sums of money must be paid over by the Federal land bank. This would be an anomalous situation, which cannot be taken as having been the intention of the Congress.

We shall endeavor in subsequent portions of this brief to show that, when a Federal land bank pays over to a national farm loan association funds for the account of its members upon farm mortgage security, such payment constitutes a valid and complete consideration for the mortgage executed in favor of the bank by the association's member. In this connection, it should be stated that we do not concur with the view expressed by the Supreme Court of North Carolina that payment of consideration for a mortgage loan must necessarily be made through a national farm loan association, and that we regard such provision as an authorization rather than a mandate. Since, however, this question is not in issue in the case, no argument need be addressed thereto.

VII. The National Farm Loan Association Is Not the Bank's Agent.

Question 2

Whether, under the Federal Farm Loan Act, a national farm loan association is the agent of the Federal land bank for the transmission of the proceeds of a loan to the borrower.

It has been held very emphatically by a number of State courts that neither the association nor its secretary-treasurer is an agent of the Federal land bank in negotiating and closing a loan. Those cases are reviewed at this point.

In the case of *Bjorkstam* v. *The Federal Land Bank of Spokane*, 244 Pac. 981, decided by the Supreme Court of Washington, Bjorkstam sold a tract of land to Stewart, who paid Bjorkstam part of the purchase price in cash and executed a purchase money mortgage for the balance. Stewart applied to the land bank through a national farm loan association for a loan with which to pay Bjorkstam. The loan was approved for $3,000, and Bjorkstam agreed that he would accept that amount and take a second mortgage for $1,250 for the balance due him. The secretary-treasurer of the association notified Bjorkstam that Stewart's application had been approved, and requested Bjorkstam to call upon him and satisfy the purchase money mortgage. Relying upon the assurance of the secretary-treasurer that he would receive the $3,000 out of the proceeds of the loan, Bjorkstam delivered to the secretary-treasurer a satisfaction of his purchase money mortgage. The bank sent a check for the proceeds of the loan, payable jointly to the secretary-treasurer of the farm loan association and Stewart, the borrower. The check was indorsed by both payees and deposited

in the secretary-treasurer's official account. The secretary-treasurer thereafter appropriated the money to his own use. Thereafter, Bjorkstam brought his action to have the bank's mortgage held inferior to his purchase money mortgage for the sum of $3,000, and to have his mortgage reinstated as a first and prior charge upon the land.

The Supreme Court of Washington, in its opinion in the case, discussed the provisions of the Federal Farm Loan Act with special reference to the relation among themselves of a borrower, a Federal land bank and a national farm loan association. It said:

> "In case an application for a loan is accepted, the association through whom the application comes is required to indorse the note which the applicant gives covering the repayment of the loan. *In other words, the association becomes a joint borrower with the applicant*, and the company requires the bank to transmit the money loaned by draft payable jointly to the secretary-treasurer of the association and the applicant. It was so done in this case, the respondent bank sending its draft from its principal place of business in Spokane payable jointly to Monterieffe Cameron, Secretary-Treasurer of the Association, and the defendant Stewart. The Federal Land Bank has no authority over any of the associations or their officers, has no voice in their selection, and cannot discharge them. The secretary-treasurer of each association is chosen solely by the directors thereof, does not receive any compensation from the Federal Land Bank, but is paid solely from the funds of the association. It would appear, therefore, that the Federal Land Bank and the National Farm Loan Association are separate and independent bodies. *It also appears that the Farm Loan Association is the agent of the borrower for that purpose.*"
>
> "Plaintiff bases his right of recovery against respondent [the Federal Land Bank] on the contention that Cameron, in taking the satisfaction of the $4,250

mortgage and placing the same of record, was acting as agent of the bank, and therefore plaintiff claims the right to have his mortgage reinstated as a prior lien to the one held by respondent from Stewart."

"*Primarily, for the purpose of procuring and transacting the matters concerning the Federal farm loan, Cameron was undoubtedly the agent of the defendants Stewart [the borrower]. He was not in any sense the agent of respondent bank. He was a public agent whose authority parties dealing with him in that capacity were bound to know.*" (Italics added.)

The court held that as between Bjorkstam and the land bank, the bank's mortgage was a first lien on the land, and that as between Bjorkstam and the borrower, Bjorkstam made the secretary-treasurer his agent to pay the $3,000 over to him.

"When Cameron embezzled the money he embezzled the money of the plaintiff [Bjorkstam]. * * *. But in this case, while Cameron was the agent of the Stewarts, the borrowers, his transaction with the borrowers had ceased. He had become, for a limited purpose, the agent of the plaintiff. As such, he defaulted."

"We therefore conclude that the maxim stated in *Wiswell* v. *Beck*, (*supra*), and *Kucher* v. *Scott*, (*supra*), should apply to the plaintiff in this case, he having put it in the power of his agent for a limited purpose to defraud another. See, also, *Johnson* v. *Milwaukee and Western Inv. Co.*, 64 N. W. 1100, 46 Neb. 480; *Campbell* v. *Gowans*, 100 P. 397, 35 Utah 268, 23 L. A. *bell* v. *Gowans*, 100 P. 397, 35 Utah, 268, 23 L. R. A. (N. S.) 414, and case note, 19 Ann. Cas. 660; *Harrison Nat. Bank* v. *Austin*, 91 N. W. 540, 65 Neb. 632, 59 L. R. A. 294, 101 Am. St. Rep. 639."

In that case the court referred also to the fact that the national farm loan association through which the loan is made is required to indorse the note given by the borrower

to the Federal land bank. In that connection the court said: "In other words, the association becomes a joint borrower with the applicant." The court held also that, in drawing a check for the proceeds of a loan, payable jointly to the borrower and the secretary-treasurer of the indorsing association, the bank did not make the secretary-treasurer its agent.

The case of *Holvick* v. *Black*, 221 N. W. 71, 57 N. D. 270, involved a contest over the superiority of the lien of a mortgage held by the Federal Land Bank of St. Paul. In its opinion the Supreme Court of North Dakota followed the Washington court in the Bjorkstam case (*supra*) stating:

> "There is no dispute but what McGovern [the secretary-treasurer] was intrusted by Troxel [the borrower] to take charge of the loan proceedings with the Federal land bank for the clearing of the title and the discharge of the mortgage. In other words, McGovern was made the general agent of Troxel for this purpose. Hence the latter is bound by whatever his agent did within the scope of his authority."
>
> "It is the claim of the plaintiff that when the Federal land bank sent its draft payable to McGovern [the secretary-treasurer] and Troxel, it thus made McGovern its agent to wind up the deal and to disburse the money to those entitled thereto."

After discussing the facts in the case, the court expressed the conclusion that they did not "show that McGovern was in any sense the agent of the land bank"; and that "the only dealing it had with McGovern [was] as the agent of Troxel is the furnishing of the money, and *the making of the draft payable to both McGovern and Troxel does not make McGovern its agent.*" (Italics added.)

In *Whitaker* v. *Fulton*, 17 S. W. (2nd) 1079, decided by the Court of Civil Appeals of Texas, it was sought to have

a land bank mortgage canceled and declared void, because the secretary-treasurer of the association had knowledge of an alleged prior "simulated conveyance" of certain land upon which the Federal Land Bank of Houston had made a loan. The court said:

> "It is claimed by the appellant that the Grayson National Farm Loan Association, through R. S. Fulton, its secretary, had actual information of the simulated sale, and their knowledge was legally imputable to the Federal Land Bank. We hold otherwise. *Bjorkstam* v. *Federal Land Bank*, 138 Wash. 456, 244 P. 981."

The case of *The Federal Land Bank of Omaha* v. *Omaha National Bank of Omaha*, 225 N. W. 471, decided by the Supreme Court of Nebraska, involves facts similar to the facts of the case now under consideration, the only essential difference being that in the Omaha case it was alleged that the indorsements of borrowers on checks sent out by the bank payable jointly to the secretary-treasurer and borrowers were forged by the secretary-treasurer. The Federal Land Bank of Omaha sued the Omaha National Bank, alleging that checks were drawn by it on the Omaha National Bank, each payable to the order of two persons, viz., "another" and "N. C. Klein, Sec.-Treas.," and upon which the secretary-treasurer had forged the indorsement of the joint payees, had been improperly paid on the forged indorsement by the Omaha National Bank and charged to the account of the land bank. The Omaha National Bank answered alleging:

> "* * *" that it was the intention of all parties to the transaction, as well as a duty enjoined by law, that said N. C. Klein, as secretary-treasurer of the Sisseton National Farm Loan Association, should collect each of said checks and deposit the proceeds thereof in the Guaranty State Bank of Sisseton, South Dakota, duly desig-

nated in the proper manner by Sisseton National Farm Loan Association as the legal depository of such funds pending their distribution to the parties entitled thereto; and that such deposit was in each of the cases set forth in plaintiffs' petition duly made by said N. C. Klein, as secretary-treasurer of said Sisseton National Farm Loan Association, in the manner required by law."

The court, after discussing the provisions of the Federal Farm Loan Act creating the Federal Farm Loan Board, the Federal Land Banks, and the National Farm Loan Association, as separate entities, said:

"Applicants for farm loans are required to be members of the association and subscribers to its capital stock. Each association elects its own board of directors; each member or borrower * * * having a voice in the selection. This board of directors in turn chooses the officers of the company, including a secretary-treasurer, who is the only paid officer of this corporation. His compensation is determined by the board of directors and he is paid from the funds of the association.

"Section 741 [of 12 U. S. C.] provides: 'Any person whose application for membership is accepted by a national farm loan association shall be entitled to borrow money on farm land mortgage upon filing his application in accordance with section 733 and otherwise complying with the terms of this chapter whenever the Federal Land Bank of the district has funds available for that purpose, unless said land bank or the Federal Farm Loan Board shall, in its discretion, otherwise determine.'

Section 761 of this chapter [of 12 U. S. C.] provides: 'Every national farm loan association shall have power:

" 'First. * * * To indorse, and thereby become liable for the payment of, mortgages taken from its

shareholders by the Federal Land Bank of its district. * * *

"'Second. * * * To receive from the Federal Land Bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under section 771 of this chapter.'

"Another requirement of this Act is [Section 722]:

"'Funds transmitted to farm loan associations by Federal Land Banks to be loaned to its members shall be in current funds, or farm loan bonds, at the option of the borrower.'

"Section 714 of this Act [12 U. S. C.] provides: 'It shall be the duty of the secretary-treasurer of every national farm loan association to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, *to pay over to borrowers all sums received for their account from the Federal Land Bank upon first mortgage as in this chapter prescribed,* and to meet all other obligations of the association, subject to the orders of the board of directors and in accordance with the by-laws of the association. It shall be the duty of the secretary-treasurer, acting under the direction of the national farm loan association, to collect, receipt for, and transmit to the Federal Land Bank payments of interest, amortization installments, or principal arising out of loans made through the association. He shall be the custodian of the securities, records, papers, certificates of stock, and all documents relating to or bearing upon the conduct of the affairs of the association.' (Italics ours.)

"It is an admitted fact in the record that N. C. Klein was duly elected and qualified as secretary-treasurer of the Sisseton National Farm Loan Association and that he, duly qualified, was acting as such during the period covered by the transactions in suit; that the Guaranty State Bank of Sisseton, South Dakota, had been duly designated by the directors of the Sisseton National Farm Loan Association as its depository in which all of its funds and all funds received by it were

required to be deposited, and that the State bank last named was such legal depository at the time all the transactions were had, and that each of the checks which are in suit represent proceeds of loan made to members of his association and through it had been received by N. C. Klein, secretary-treasurer, and had been by him duly deposited in the Guaranty State Bank of Sisseton, in strict accordance with the directions of such board of directors, the only irregularity being that he had failed in each case to obtain the indorsement of the person with whom, in each instrument, he was named as copayee.

"It thus appears that whatever misappropriation of funds may have been made it was made after the deposit had been completed, as directed by the board of directors of the local association, and that the association, either in its own name, or in the name of 'N. C. Klein, as secretary-treasurer,' had been duly credited with such deposit on the books of the Guaranty State Bank of Sisseton.

"The provisions of the statutes quoted fairly disclose the legislative intent to be that, when farm loans were made, funds arising therefrom should be transmitted by the Federal land banks to their several farm associations and to be by the latter disbursed to the members making the loans.

"Indeed, section 772, appears to make this duty mandatory to transmit such funds in 'current funds' or farm loan bonds. It thus must be conceded that when the deposit was made in the bank to the credit of 'N. C. Klein, secretary-treasurer' of the Sisseton National Farm Loan Association, the course of business intended by those participating therein and contemplated by the terms of the statute had been duly completed, the only irregularity appearing being that the mortgagor making the loan had not subscribed his name as an indorsement on the instrument which transmitted the 'current funds,' as insisted on by the plaintiffs. Under these circumstances the rule appears to be: 'As a bank is authorized to pay only to the person designated by

> the depositor, it cannot charge against the depositor's account an amount paid by it on a forged indorsement of the depositor's check, unless such payment is properly attributable to the negligence or other fault of the depositor, or unless the money has actually reached the person whom the drawer intended should receive it, or the drawer himself.' 7 C. J. 686, Sec. 414.
>
> "So far as the present transactions are concerned, it must be conceded that the terms in which the legislative intent is expressed, as well as the acts of the parties, and the established course of business disclosed by the record, indicate the person the drawer of these checks in controversy actually intended to receive the money was 'N. C. Klein, as secretary-treasurer,' representing the Sisseton National Farm Loan Association, to be by him distributed as directed. That was the plain purpose of all concerned. It cannot be gainsaid but that these funds and the proceeds of each check in suit actually came into possession of the Sisseton National Farm Loan Association through the act of its secretary-treasurer in the exercise of the powers of his office, and was by him deposited in the depository duly designated as such in the manner contemplated by the Act."

The Supreme Court of Georgia in a well-considered opinion in the case of *The Federal Land Bank of Columbia* v. *Shingler et al.*, 174 Ga. 352, 162 S. E. 815, at 823, said that under the Federal Farm Loan Act the Federal Farm Loan Board, the Federal land banks, and the national farm loan associations are three separate agencies with distinct and independent functions, and that—

> "the local Farm Loan Associations do not derive their charters or powers from the Federal Land Banks. Their particular function is to receive applications for loans, all of which applicants are required to become members of the association and to subscribe to its capital stock; and under the Federal Farm Loan Act a secretary-treasurer of a local farm loan association is not an agent of the Federal Land Bank which makes

> the loan, but is a public agent whose authority parties dealing with him in this capacity are bound to know. *Bjorkstam* v. *Federal Land Bank*, 244 Pac. (Wash.) 981."

In the case of *The Federal Land Bank of Berkeley* v. *Warner*, which is now pending before this Court on petition for writ of certiorari to the Supreme Court of the State of Arizona, the following statement was made by the Arizona court on a point not involved in the petition here, in an opinion rendered July 1, 1933:

> "The negotiations for loans are not carried on between the bank and the borrower but between the bank and a local farmers' association *representing the borrower*." (Italics added.)

In its ruling respecting the relations between borrower, bank and association, the court followed the Supreme Court of North Dakota, in the case of *Byrne* v. *Federal Land Bank of St. Paul*, 237 N. W. 797, which held that the association is not the agent of the Federal land bank.

In the case of *McFaddin* v. *Bland*, 147 S. C. 27, 144 S. E. 592, relied on by respondent, it was held by the Supreme Court of South Carolina that under the facts, an attorney who embezzled the proceeds of a Federal land bank loan was the agent of the bank. In this case the attorney was selected by the borrower from a list of abstractors acceptable to the bank for the preparation of her abstract of title. A check for the amount of the loan, payable to the joint order of the borrower and the secretary-treasurer of the indorsing association was sent forward to the abstracting attorney, who obtained their indorsements on the check, cashed it, and embezzled the proceeds. The court held that—

> "the indorsement of said check by the payee, while necessary, was simply formal in that transaction, for

> the money was to be disbursed by O'Brian [attorney]. * * * The Federal land bank relied on him to see that the record was clear and the loan closed, and the money applied to the indebtedness of Mrs. McFaddin. O'Brian was required to follow the directions of the Federal land bank, and not the directions of the plaintiff * * *."

Without conceding the correctness of this decision on the facts presented, we submit that the case was not decided under the provisions of the Federal Farm Loan Act relative to the relation between a borrower, his association and the bank under the provisions of that Act.

There is, however, in the McFaddin case a strong dissenting opinion by Mr. Justice Cochran, in which he points out the provisions of the Act and the relations of the various parties under it. In the dissenting opinion Mr. Justice Cochran calls attention to the case of the *Atlantic Life Ins. Co.* v. *Rowland*, decided by the U. S. Circuit Court of Appeals of the Fourth Circuit, 22 Fed. 2d, 126. In that case it was held that where the insurance company designated O'Bryan, the same attorney involved in the McFaddin case, to prepare the necessary papers, and to do the other things requisite to close the loan, the loss must fall upon the borrower who had indorsed the check and turned it over to the attorney to pay off a prior mortgage.

It is clear from the foregoing authorities that in every instance in which the courts have had occasion to pass upon the question, they have held that the national farm loan associations and their respective secretary-treasurers are not agents of the Federal land bank and that the bank is not bound by transactions between them and borrowers in connection with the closing of loans. The correctness of these decisions will be manifest when all of the provisions of the Federal Farm Loan Act are considered in their proper relation one to the other.

All applicants for loans, and all borrowers, have constructive notice of all the terms and provisions of the Federal Farm Loan Act, which expressly provides that the secretary-treasurers of the associations of which they become members and shareholders, are authorized to receive proceeds of loans from the Federal land bank for their account and to pay the same to them. In this case the borrower, in her application for the loan expressly applied for the same through a national farm loan association "pursuant to the provisions of the Federal Farm Loan Act."

Under Sections 7 and 11 of the Federal Farm Loan Act (12 U. S. C., Sections 712 and 761), the borrower, and not the Federal land bank, pays the fee charged by the association in connection with its consideration of the loan application, and its part in the making of the loan; and the association from its funds compensates the secretary-treasurer for the services rendered by him.

Under the Act the national farm loan association is a separate and distinct corporation from the Federal land bank, over which the Federal land bank has no control. The Federal land bank has no voice in the selection of the secretary-treasurer of the national farm loan association, no control over him and no right to remove him from office. In view of these facts, it can not reasonably be contended that Congress intended that the national farm loan association or its secretary-treasurer must be employed by the Federal land bank as its agent, or as an irresponsible "intermediary", for the purpose of paying loan funds to the borrower.

The proper and only reasonable construction of the Act is that Congress intended that in negotiating a loan, the association acts as the agent of the borrower. To construe the Act otherwise would not only be contrary to the fundamental principle of agency, that the principal has the sole right to select and control the agent as well as to terminate

the agency, but also would render unsafe the making of loans by Federal lank banks and the pledging of the mortgages securing the same as collateral to farm loan bonds issued and sold by the banks to investors.

Special attention is invited to Section 7 of the Federal Farm Loan Act (12 U. S. C., Section 721), which provides that "*Whenever any national farm loan association shall desire to secure for any member a loan* on first mortgage from the Federal land bank of its district * * * ;" and to the following language of Section 7 of the Act (12 U. S. C., Section 714): "It shall be the duty of the secretary-treasurer of every national farm loan association * * * *to pay over to borrowers all sums received for their account* from the Federal land bank upon first mortgage *as in this chapter prescribed* * * *." (Italics added.)

It is submitted that by the use of the words "*to secure for any member a loan*" Congress intended that the association should act as the agent of its members in connection with applications for loans from the Federal land bank. The words "*for their account,*" as used in the Act, should be construed to mean that when the funds are received by the association they are received by the borrower, that the association, acting by its secretary-treasurer, is the agent of the borrower for that purpose, that immediately upon delivery of the loan funds by the bank to the association the transaction is complete as between the bank and the borrower, and there is consideration for the note and mortgage.

The validity of a payment made, pursuant to the authorization or consent of a creditor, by a deposit with a third party for the account of the ultimate payee, has been passed upon by the courts under general and well-settled rules of law, which, it is submitted, do not differ from the rule established under the Federal Farm Loan Act.

This Court, in *Hinkle* v. *Wanzer et al.*, 58 U. S. (17 How.) 353, 15 L. Ed. 173, stated:

> "Where a creditor, *in whose behalf* a stake has been deposited by the debtor with a third person, receives notice of that fact from the stockholder, the notice will convert the stockholder into an agent for, and debtor to, the creditor" (Italics added). See also: *White* v. *Miners' Nat. Bank*, 102 U. S. 658, 661, 26 L. Ed. 250.

In *Merriam* v. *Haas*, 3 Wall. (70 U. S.) 687, 18 L. Ed. 29, the loan secured by the mortgage sought to be foreclosed was negotiated in some part through the banking house of Caldwell and Company, of St. Paul, where the defendant resided. The proceeds of the loan were remitted by the mortgagee to Caldwell and Company, which failed without having paid over all of the same to the mortgagor, the defendant. The sole issue before the court was for which of the parties Caldwell and Company held the proceeds of the loan at the time of their failure. The amount of the mortgage was $6,000, $4,000 of which was received by the mortgagor. The remaining $2,000, by stipulation, was to be advanced when the mortgagor should finish a building on the lot conveyed by the mortgage, and cause it to be insured for the benefit of the mortgagee. Upon completion of the building, the policy of insurance was delivered by the mortgagor to Caldwell and Company who were satisfied that the requirements regarding the completion of the building and the insurance thereof had been complied with, and thereupon Caldwell and Company drew a draft on the mortgagee, residing in Boston, for $2,000. The draft was honored by the mortgagee and Caldwell and Company received the money. The day after the draft was drawn by Caldwell and Company a credit for $2,000 was entered on their books in favor of the mortgagor and between that

time and eight days later, when Caldwell and Company failed, the mortgagor drew or received payment from Caldwell and Company of part of the $2,000. Upon these facts the court held that all of the $2,000, representing the amount in controversy, was held by Caldwell and Company at the time of their failure for the mortgagor and not for the mortgagee, that the mortgagor knew and consented to the credit which Caldwell and Company had given him, that the loss was his, and the mortgagee was entitled to foreclosure for the full amount of the mortgage.

It is submitted that even if the borrower had not been made a copayee of the check in this case, the payment of the check to the association would have constituted payment to her under the foregoing cases. Even in the case of a conditional payment, which does not exist here, such would have been the result, since the association was a joint obligor on the mortgage note. It appears to be the uniform rule that a conditional delivery to a party to a contract does not create an escrow. It was stated by this Court in the case of *Moss* v. *Riddle & Co.*, 9 U. S. 351, 358, 3 L. Ed. 123, 125, that:

> "It is admitted by the counsel in this case, that a bond cannot be delivered to the obligee as an escrow. But it is contended that where there are several obligees constituting a co-partnership, it may be delivered as an escrow to one of the firm. The court, however, is of opinion that a delivery to one is a delivery to all. It can never be necessary to the validity of a bond that all the obligees should be convened together at the delivery."

The authorities further hold that where delivery is made to a party to a contract, such delivery is absolute, and passes title to such party. The conditions and stipulations accompanying such delivery are held not to affect the title

but to be contractual obligations. In this connection it was stated by the Supreme Court of Missouri in the case of *Massman* v. *Holscher*, 49 Mo. 87, 89, that:

> "A note, as well as a deed, may be delivered as escrow, and the law of escrow is substantially the same in both cases. In either case it is necessary that the instrument in the first instance should be delivered to a stranger; that is, to a person not a party to the contract. Neither a note nor a deed can be delivered to the grantee or promisee to be held by him as an escrow."

Neither any particular provision of the Federal Farm Loan Act, the Act as a whole, nor the Reports of the Senate and House Banking and Currency Committees, hereinbefore mentioned, indicate that Congress intended that the national farm loan association would act as an agent for the Federal land bank in the making of loans to farmers. In a different connection, however, the Act authorizes the employment of associations as agents. Section 7 of the Act (12 U. S. C., Section 714) provides that:

> "It shall be the duty of the secretary-treasurer, *acting under the direction of the national farm loan association* (italics ours), to collect, receipt for, and transmit to the Federal land bank payments of interest, amortization installments, or principal arising out of loans made through the association."

This section must necessarily be read in connection with Subsection 3, Section 13 of the Act (12 U. S. C., Section 781, *third*), which provides that every Federal land bank—

> "shall have power, subject to the limitations and requirements of this Act * * * to empower national farm loan associations, or duly authorized agents, to collect and immediately pay over to said land banks the dues, interest, amortization installments, and

other sums payable under the terms, conditions and covenants of the mortgages and of the bonds secured thereby."

These sections of the Act indicate that unless the Federal land bank affirmatively authorizes a national farm loan association, and the association directs its secretary-treasurer, to collect the payments specified therein, neither the national farm loan association, nor its secretary-treasurer, would be acting as an agent for the Federal land bank in collecting payments. These are the only provisions of the Act which authorize a Federal land bank to employ a national farm loan association or its secretary-treasurer as an agent for any purpose. It will be noted, however, that it is within the discretion of the Federal land bank to select either the association or someone else as agent to make its collections.

Section 15 (12 U. S. C., Sections 801-808) is the only provision of the Act which refers to an agency for Federal land banks in the making of loans. Under this section the Federal land bank may make loans on farm lands through State banks and the other institutions therein specified as the agent for the land bank. In this instance the Federal land bank also has the power to select, with the approval of the Federal Farm Loan Board, the agent, and to terminate the agency. It is significant that Congress stated expressly that banks, and other institutions specified in Section 15 of the Act, may be appointed agents of a Federal land bank for the purpose of making loans to farmers but did not state that a national farm loan association might be so employed. It is submitted that the well established rule of construction, "*expressio unius est exclusio alterius,*" applies and, therefore, Congress intended that neither the national farm loan association nor its secretary-treasurer

should be considered an agent of the Federal land bank in connection with the making of a loan. On the contrary by the use of the words "for their account," in Section 7 (12 U. S. C., Section 714), it is clear that the draftsmen of the Act intended that the national farm loan association by its secretary-treasurer would act as agent for the borrower in receiving from the Federal land bank the proceeds of his loan.

At the time the borrower in this case authorized the secretary-treasurer of the association to endorse her name to the check representing the proceeds of the loan, made payable jointly to her and the secretary-treasurer, she had actual notice that the Act authorized the association and its secretary-treasurer to receive for her account the loan funds and to pay them to her, and that the funds were being transmitted by the bank to her in this manner. These facts present a situation virtually identical with that involved in the case of *Merriam* v. *Haas*, *supra*, and it is submitted that this Court's decision in that case is controlling in the case under consideration.

VIII. The National Farm Loan Association is a Cooperative Organization, Representing the Borrower, and is Not a "Public Agent."

Question No. 3

> Whether a national farm loan association, in receiving and handling sums transmitted by a Federal land bank in connection with the closing of a mortgage loan, receives and handles such sums for the account of the borrower or as a "public agent".

The Federal Farm Loan Act clearly shows that a national farm loan association is a corporate entity, separate and distinct from the Federal land bank. It is a cooperative

organization. Its cooperative character was emphasized by the Supreme Court of North Dakota in an opinion rendered in *Byrne* v. *Federal Land Bank of St. Paul* (N. D. 1931), 237 N. W. 797, wherein the court stated:

> "As we have pointed out, the principle involved in the act is cooperative in its nature. It is only through the cooperation of his neighbors, with their assistance and upon their recommendation and the pledge of their liability he can secure his loan. They pledge their faith and credit to aid him, and he pledges his faith and credit to aid them."

The Federal Farm Loan Act was passed at a time when great progress was being made in the organization of farmers' cooperatives. At that time, State laws were being enacted for the organization of associations of agricultural producers for the purpose of cooperative purchasing and marketing. The cooperative movement among farmers has been held by this Court to be for the promotion of their common interest (*Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-Operative Marketing Association*, 276 U. S. 71, 96; 72 L. Ed. 473, 485).

Depending upon the form of the marketing contract, the member of a cooperative marketing association either passes title to the produce which he delivers to the association at the time of the delivery thereof or makes the marketing association his agent with power to sell or pledge the produce delivered by him to the association. In either event, these marketing contracts have been upheld, and it can not be argued that the purchaser or pledgee of produce from the marketing association does not obtain title thereto when he pays the marketing association the purchase price thereof or makes loans thereon to the marketing associa-

tion, even though the marketing association does not, or is unable to, remit the proceeds of the sale or pledge, less its expenses and charges, to the member (*Washington Cranberry Growers' Association* v. *Moore* (Wash.), 201 Pac. 773; *Poultry Producers* v. *Barlow* (Cal.), 208 Pac. 93; *Northern Wisconsin Co-Op. etc.* v. *Bekkedal* (Wis.), 197 N. W. 936; *Tobacco Growers' Co-Op. Asso.* v. *Battle* (N. C.), 121 S. E. 629).

Similarly, the farmer desiring a loan under the provisions of the Federal Farm Loan Act, delivers his note and mortgage to the Federal land bank through the national farm loan association, a cooperative institution of which he is a member, for loan funds procured by the Federal land bank by the issuance and sale of its bonds to the investor collaterally secured by the note and mortgage, and under the Act the payment of the loan funds by the Federal land bank to the national farm loan association constitutes payment to the borrower and affords consideration for the note and mortgage as between the borrower and the Federal land bank, regardless of whether the national farm loan association does, or is able, to pay the same to the borrower.

Notwithstanding the well established principle that a cooperative association represents its members, and acts as their agent in performing services or obtaining credit for them, the court below held that the particular type of cooperative with which we are now dealing, *i. e.*, a national farm loan association, must be regarded as a "public agent." The borrower contended that the association did not act for her and as her representative, in negotiating for this loan and receiving the proceeds thereof. The borrower relied upon the statement made by the Supreme Court of Washington in the Bjorkstam case (*supra*), that the secretary-treasurer "is a public agent whose authority

parties dealing with him in that capacity are bound to know."

We doubt whether the Washington court in the statement above quoted, intended to refer to the secretary-treasurer as a public official. On the contrary, the reasoning and conclusions set out in the court's opinion clearly indicate that the secretary-treasurer was regarded as an agent of those who deal with him, and who by such dealing make him their agent, and that the duties and powers of the secretary-treasurer are fixed by law, and that such persons are bound to take notice of those duties and powers.

Let us assume, however, that the lower court was correct in holding that the classification "public agent" may be deemed to include a national farm loan association and its secretary-treasurer. As we have previously shown, the association is expressly empowered by the Federal Farm Loan Act (12 U. S. C. Section 720) "to receive from the Federal land bank of its district sums to be loaned to its members under the terms and conditions of this Act." Other provisions of the Act, authorizing the Federal land bank to deliver loan funds to an association, and authorizing the association to receive the same, have been set forth earlier in this brief. It is apparent from these provisions that in paying such funds to the associaton, the Federal land bank did so in accordance with a procedure authorized by the Act. If, therefore, the association or its secretary-treasurer was a public agent, payment to it was made pursuant to statutory authorization; and under the rule of law so familiar to this Court, such payment would constitute a complete acquittance of the bank with respect to the obligation so paid. We submit that the rule applicable to payments made to the clerk, register or commissioner of a court; to a collector of taxes; to a collector of customs; or to any other public agent authorized to receive payment,

would be applicable in the instant case, and would constitute payment of consideration by the land bank in the manner authorized by law.

This rule has been applied by the Supreme Court of North Carolina, in the cases of *Sharpe, Admr.*, v. *Connelly*, 105 N. C. 87, 11 S. E. 177, and *Smith* v. *Patton*, 131 N. C. 396, 42 S. E. 849. In each of these cases, property was sold under judicial proceedings, in the one instance under a decree of foreclosure, in the other pursuant to a decree of partition. In each case, a portion of the proceeds of sale was deposited with the clerk of the court, to be held by him subject to further orders of the court. In both instances the clerk failed to pay over the money to the parties entitled thereto, and the Supreme Court held that consideration had nevertheless passed for the property. It is submitted that in this case, the Supreme Court of North Carolina failed to follow its own rule, laid down in the two cases just cited, relative to the validity of a payment properly made to a public officer for the use and benefit of another.

We believe, however, that a national farm loan association may not properly be regarded as a "public agent." The association is organized by the voluntary act of individual persons, for their mutual benefit. The members of an association come into the organization for the purpose of obtaining, through its cooperative facilities, the favorable terms available to the association's members. By joining the association, and seeking through it loans from a Federal land bank, the members are enabled to obtain credit at low interest rates, with low initial charges, secured by first mortgages which are repayable in installments over a long period of years. The motives which actuate a farmer in applying through a national farm loan association are motives of personal benefit. The facilities of the

association are available because he and others have thought it desirable to join a cooperative enterprise and avail themselves of the benefits. An organization of this character is, we submit, utterly different from a public agency.

IX. Mortgage Not Invalidated by Loss of Loan Funds While Held by Indorsing Association.

Question No. 4

> Whether a mortgage executed and delivered to a Federal land bank is impaired or invalidated due to the loss of the sums transmitted in consideration of such mortgage, while such sums are in the hands of the indorsing national farm loan association, which has receipted for the same.

It has previously been demonstrated that, whether this case is considered in the light of general law or under the provisions of the Federal Farm Loan Act, consideration must be deemed to have passed for the mortgage executed in favor of the Federal Land Bank of Columbia by the borrower. If the Court concurs in this contention, and holds that the bank had paid the full consideration for this mortgage, we submit that there is no theory on which it could be found that the mortgage subsequently became impaired or invalidated.

The mortgage itself contains no provision relieving the borrower of liability for repayment of the loan in the event of any contingency occurring after the closing date. On the contrary, the mortgage specifically establishes a lien on the property therein described to secure the repayment of the note in accordance with its terms. Therefore, consideration having been given by the land bank for this note

and mortgage, we submit that the contract was fully performed by the bank, and that it remains valid and enforceable.

X. Conclusion.

It is, we submit, clear, under the law and the admitted facts, that:

1. The provisions of the Federal Farm Loan Act determine the rights and liabilities of the bank and the borrower, and, so determined, (*a*) the Columbus National Farm Loan Association was the agent of the borrower, and delivery of the loan funds to the secretary-treasurer of the association, was delivery to the borrower; (*b*) payment of the loan funds by the bank to the Columbus National Farm Loan Association was in accordance with the authorization of the Federal Farm Loan Act and was a complete discharge of the duty placed upon the bank by the Act and by the loan contract with the borrower, and there was consideration for the note and mortgage in question.

2. It was never intended by the Congress that a Federal land bank should be placed at the mercy of a national farm loan association, not its creature, not its agent, and over which it has no control or supervision whatsoever. The contrary is clear, that, when a borrower voluntarily goes into a national farm loan association, secures election to membership, files his application for a loan, and adopts the machinery of the national farm loan association, of which he is a part, for the purpose of securing it, he does so at his own risk, and the Federal land bank is protected, and has completed its duty, when it pays the loan funds to the national farm loan association, and there is con-

sideration for the note and mortgage executed by the borrower to the Federal land bank.

Respectfully submitted,

PEYTON R. EVANS,
Washington, D. C.;
I. M. BAILEY,
Raleigh, N. C.;
MAY T. BIGELOW,
Washington, D. C.,
Attorneys for Petitioner.

HERMAN OLIPHANT,
Washington, D. C.;
HARRY D. REED,
Columbia, S. C.;
J. S. MASSENBURG,
Tryon, N. C.,
Of Counsel for Petitioner.

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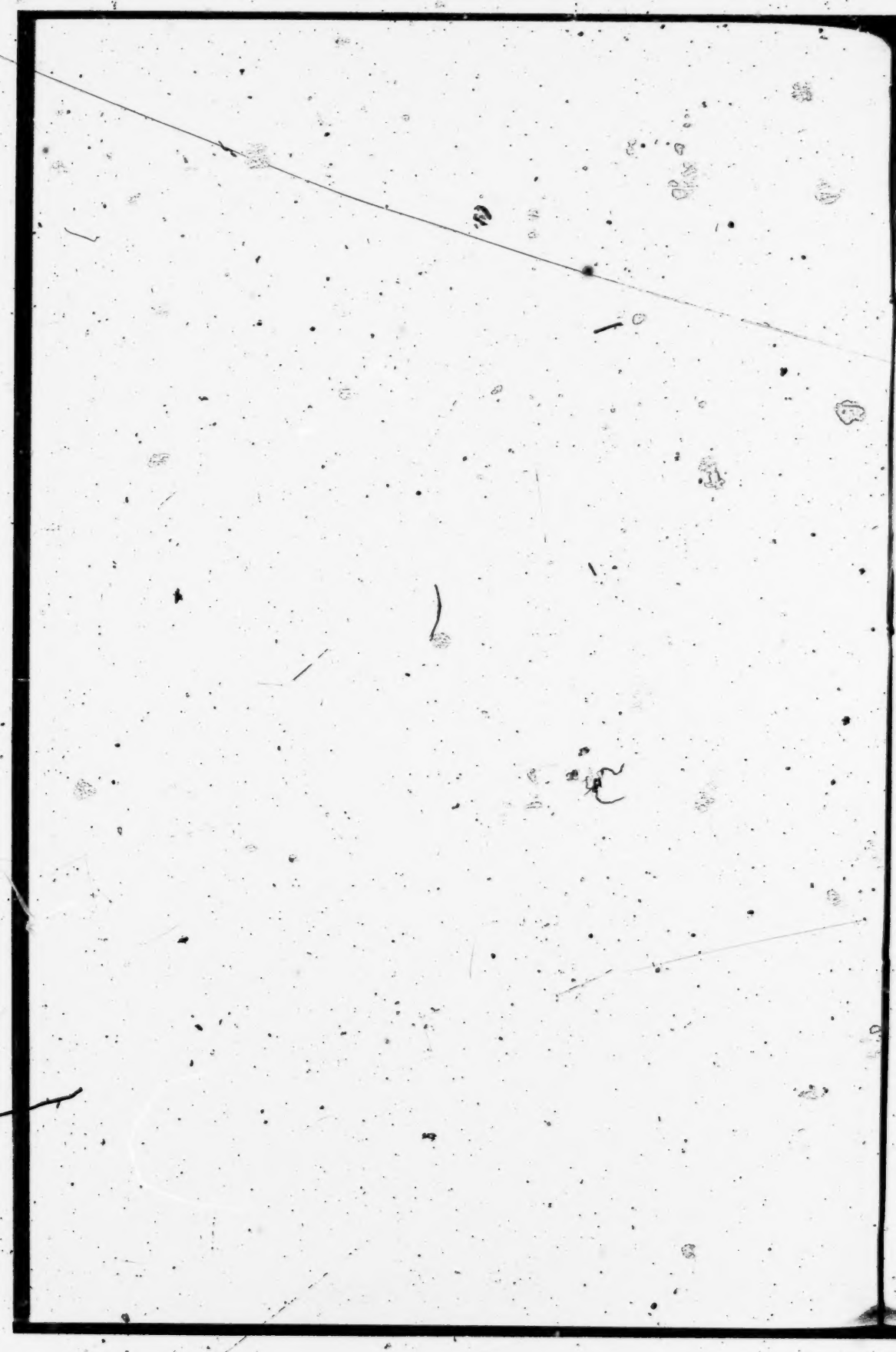

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA, S. C., PETITIONER,

vs.

MRS. WILL GAINES, RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of the United States:

Respondent respectfully submits to this Honorable Court the following brief in opposition to the petition for a writ of certiorari:

Statement of the Case.

This controversy arises out of business transacted under the provisions of the Federal Farm Loan Act (U. S. Code, Title 12, Chapter 7, Sections 641, *et seq.*) and the parties are in accord that the case is controlled by the provisions of the act.

Brushing all cobwebs aside, the facts briefly are that respondent applied to petitioner through the Columbus National Farm Loan Association for a loan in accordance with the provisions of the Federal Farm Loan Act. As a part of the transaction in connection with obtaining and closing the loan, respondent executed a note and mortgage to evidence and secure the loan, on receipt of which petitioner forwarded its check payable jointly to the secretary-treasurer of the Columbus Farm Loan Association and respondent. This check was delivered to the secretary-treasurer of said association on November 18, 1930 (Record page 4), and was deposited by said secretary in the association's depository to the credit of said association. The proceeds of said check were in due course paid to the said depository and almost simultaneously the depository closed its doors (Record page 17). No part of said funds except $54.23 have ever been disbursed to respondent and the closed loan form of petitioner has never been completely filled out or executed (Record page 18).

From the agreed facts the question arises as to whether or not, on the note and mortgage which she executed, respondent is liable for an amount in excess of the $54.23 which was disbursed in payment of respondent's taxes.

Reasons for the Disallowance of Writ.

It is submitted that the petition for the writ of certiorari should be refused for the following among other reasons:

1. The provisions of the Federal Farm Loan Act applicable to this controversy were correctly construed by the Supreme Court of North Carolina in the opinion handed down in this case (Record pages 26 and 27, *Federal Land Bank of Columbia* v. *Mrs. Will Gaines*, 204 N. C. 278, 167 S. E. 856).

2. The funds for closing the loan applied for by respondent were in process of transmission and were exactly where the act of Congress provided they should be, that is to say in the custody of the Columbus National Farm Loan Association where they are arrested by reason of the insolvency of the duly designated depository of said association, and by reason thereof did not reach respondent except as to the sum of $54.23, and respondent's liability should be limited to the amount received.

ARGUMENT.

The petition, on pages 6 and 7, refers to Sections 714 and 761 of U. S. Code, Title 12, and emphasizes that the duty of a secretary-treasurer of a national farm loan association is "to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, *to pay over to borrowers all sums received for their account from the Federal land bank upon first mortgage as in this act prescribed, etc.*" This provision must be construed in connection with the rest of the act and respondent thinks that Sections 720 and 772 of the Federal Farm Loan Act, properly construed with the sections quoted are not in accord with the contention of petitioner.

Section 720 of the Federal Farm Loan Act is as follows:

> "Upon receipt of its Charter said National Farm Loan Association shall be authorized and empowered to receive from the Federal Land Bank in the district *sums to be loaned to its members* under the terms and conditions of this act." (Italics ours.)

Section 772 of the Federal Farm Loan Act is as follows:

> "Funds transmitted to National Farm Loan Associations by Federal Land Banks *to be loaned to its members* shall be in *current funds* or farm loan bonds at the option of the borrower." (Italics ours.)

To attempt to construe legislative intent by drawing distinctions between the language emphasized by petitioner and the language which we have written in italics would be futile. The Act of Congress created the Federal Land Banks and the National Farm Loan Associations as separate entities, prescribing the duties of each. The act requires applicants for loans to deal with Federal Land Banks through National Farm Loan Associations. In enacting the Federal Farm Loan Act, and its amendatory acts, Congress sought to aid land owners in obtaining loans and all applications for loans must be made through a national farm loan association where one exists, and no loan can be made by a Federal land bank directly to a borrower. Congress requires both the Federal land banks and the borrower to utilize the services of a national farm loan association and the holding of the Supreme Court of

North Carolina that a national farm loan association is an "intermediary" and as such is a public agent, would seem to be correct as was held in *Bjorkstam* v. *Federal Land Bank of Spokane*, 136 Wash. 446, 244 Pac. 981, and in *Federal Land Bank of Columbia* v. *Shingler et al.*, 174 Ga. 352, 162 S. E. 815.

On pages 7 and 8 of the petition it is argued that the North Carolina Court failed to apply a general rule of law there stated. The respondent does not think this rule of law applicable for the reason that the course of dealing being here discussed was prescribed by the Federal Farm Loan Act and there was no agreement between the two obligors that the consideration for their undertaking should be paid to one of said obligors. In fact the course of action of the two obligors was prescribed by the Federal Farm Loan Act and they were bound by the provisions of the act and could only act in accordance therewith.

It must be borne in mind that the payment of the check was to the intermediary association and not to the borrower. The circumstances under which the respondent authorized the endorsement of the check for her did not constitute payment of a consideration to her. Her endorsement, while necessary, was a mere formality, as the funds under the terms of the act were to be collected by and disbursed by the association and this fact was emphasized to respondent by the secretary-treasurer of the association when he requested authority to endorse for her.

There are some features of the instant case similar to the case of *McFadden* v. *Bland*, 147 S. C. 27, 144

S. E. 592, and *Federal Land Bank of Omaha* v. *Omaha National Bank of Omaha*, 118 Neb. 489, 225 N. W. 471. In the South Carolina case funds being transmitted to close the loan were misappropriated by O'Bryan, the attorney who examined the title and by reason of said misappropriation did not reach the borrower. The court held that the borrower was not liable. In the Nebraska case the funds were embezzled by the secretary-treasurer of the national farm loan association after they had reached the designated depository, but before they reached the borrower. The action was by the plaintiff Federal Land Bank against its depository to recover the amount charged against the account of the plaintiff on checks issued by it on said depository where the endorsement of one of the joint payees had been forged. It does not appear in the case that the plaintiff had undertaken to collect from the borrower or borrowers whose endorsement had been forged, but it is a reasonable argument that if the plaintiff could have collected from borrower there would have been no necessity for suing its depository bank. The respondent does not believe that the Federal Land Bank of Omaha could recover against the borrower whose endorsement had been forged, even though such borrower executed the note and mortgage, where the borrower had not received the funds, and by analogy it would follow that the Federal Land Bank of Columbia should not recover from respondent in the instant case where respondent has not received the funds either actually or constructively.

In the South Carolina case cited the funds did not reach the borrower by reason of the misappropriation

of O'Bryan, the attorney. In the Nebraska case cited the funds did not reach the borrower by reason of the embezzlement of the secretary-treasurer of the national farm loan association. In the instant case there is no embezzlement or misappropriation, but the funds did not reach the borrower by reason of the insolvency of the depository. The respondent respectfully submits that under such facts a borrower who has not received the funds should not be liable and that a proper construction of the Federal Farm Loan Act fixes no liability on an applicant for a loan under the facts existing here.

Section 772 of the Federal Farm Loan Act says:

> "Funds transmitted to Farm Loan Associations by Federal Land Banks to be loaned to its members shall be in current funds, or farm loan bonds, at the option of the borrower."

It does not appear that Mrs. Gaines elected to exercise her option or that the Federal Land Bank of Columbia undertook to transmit farm loan bonds to close the instant loan and it must be taken that the parties intended that the funds to be transmitted would be in current funds. Mr. Lewis evidently did not think that the check met requirements because he told respondent that the proceeds of the check had to be collected and it would be several days before he would have the proceeds for disbursement; that the funds derived from said check would not be available for distribution until such funds were received in Columbus. It cannot be doubted that Mr. Lewis expected to disburse the funds to Mrs. Gaines and that he would

have done so but for the insolvency of the duly designated depository of the Columbus National Farm Loan Association. It cannot be reasonably inferred from the facts that respondent intended that Mr. Lewis should receive the funds for her. That is exactly what she did not intend and by every reasonable inference her intention was to get the funds as soon as they were available to her. The insolvency of the depository made it impossible for the local association to loan to respondent the funds which it had received from petitioner as was contemplated by a proper construction of the provisions of the Federal Farm Loan Act.

For the result to be in accordance with the contention of petitioner the respondent will undoubtedly lose her small farm of 27 acres, although she has not received the money for which her note and mortgage were executed. It cannot be believed that Congress intended that land owners would lose their land by reason of the inability of national farm loan associations to complete the closing of a loan under the facts agreed in this case.

On page 4 of the petition it is said that the questions raised in the instant case have never been submitted or passed upon by the Supreme Court of the United States and that the ruling of the Supreme Court of North Carolina, with respect to the issue of law in this case, is contrary to the decision of the highest courts of States other than North Carolina that have passed upon the question. No cases are cited decisive of the question involved here. It is elementary that the burden of proof is on the petitioner to show error.

Summary and Conclusion.

1. The funds in question were transmitted by the Federal Land Bank of Columbia to the Columbus National Farm Loan Association to be loaned to respondent and delivery of the funds to said association was not delivery to respondent.

2. The respondent should not be liable for the payment of the funds until actually received by her.

3. The decision of the Supreme Court of North Carolina correctly construes the provisions of the Federal Farm Loan Act.

4. The burden of showing error is on the petitioner.

It is, therefore, submitted that the petition should be denied by this Honorable Court.

Respectfully submitted,

M. R. McCown,
Tryon, N. C.,
Attorney for Respondent.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA,
PETITIONER,

vs.

MRS. WILL GAINES, Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF ON BEHALF OF RESPONDENT

I. STATEMENT

The facts in this case are not in dispute and the parties are in accord that the determination of the controversy is dependent upon a construction of the Federal Farm Loan Act (U. S. Code, Title 12, Chap. 7, Sec. 641, et. seq.).

The facts raise clearly the question whether or not the respondent is liable for the payment of the funds which

the Federal Land Bank of Columbia had transmitted to the Columbus National Farm Loan Association to be loaned to respondent. The funds were deposited in the Polk County Bank & Trust Company, the duly designated depository of said association, to the credit of said association, and by reason of the insolvency of the said depository, were not paid over to respondent.

In this argument the contentions of the respondent will be set out under the following general heads:

1. Delivery of the funds by appellant to the Columbus National Farm Loan Association was not a delivery of the funds to respondent.

2. The Columbus National Farm Loan Association was not the agent of respondent for the purpose of receiving the funds in question, but was acting as a "public agent."

II. DELIVERY OF THE FUNDS BY APPELLANT TO THE COLUMBUS NATIONAL FARM LOAN ASSOCIATION WAS NOT A DELIVERY OF THE FUNDS TO RESPONDENT.

Bearing in mind that "no Federal land bank shall have power to loan on first mortgage except through national farm loan associations as provided in section seven and section eight of this Act, or through agents as provided in section fifteen" (Federal Farm Loan Act, Section 14, 12 U. S. C., Section 791) attention is directed to the part of the Act (Section 11, 12 U. S. C. Section 761) enumerating the powers of national farm loan associations, reading as follows:

> "Second. To receive from the Federal Land Bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under Section 12 of this act." (Emphasis Ours.)

The respondent submits that under a proper construction the language above quoted means that the Federal land bank advances funds to a national farm loan association and that said association "**delivers said funds to its shareholders on receipt of first mortgages qualified under section 12 of this act.**" A complete and final delivery of the mortgage security was not contemplated until the funds were paid over to the shareholders, and it follows that there would be no liability on the part of the shareholder until the payment of the funds and the delivery of the mortgage. From the language used follows the irresistible conclusion that Congress did not mean for the shareholder of a national farm loan association to be liable until the transaction was completed, that is until the shareholder actually received the funds. Congress intended to help applicants for loans, and this thought, with justice and equity considered, leads also to the conclusion that Congress did not contemplate a liability on the part of an applicant for a loan until said applicant actually received the money.

The same conclusion is reached from the language used in section 7 of the act (12 U. S. C. Section 720), which is as follows:

> "Upon receipt of its charter such national farm loan association shall be authorized and empowered to receive from the Federal land bank of the district **sums to be loaned to its members** under the terms and conditions of this act." (Emphasis Ours.)

The practice is for the applicant to execute the mortgage and forward it for examination and approval, but the foregoing quotations from the act unmistakeably say that national farm loan associations are to deliver said funds on receipt of the mortgage. Fairly construed the language means that the mortgage is effective when the borrower receives the funds.

It is true that in defining the duties of the secretary-treasurer of a national farm loan association (Sec. 7, 12 U. S. C., Section 714) the Act says:

> "It shall be the duty of the secretary-treasurer of every national farm loan association to act as custodian of its funds and to deposit same in such bank as the board of directors may designate, to pay over to the borrowers the sums received for their account from the Federal land banks upon first mortgage as in this Act prescribed."

The respondent respectfully submits that the language used by Congress in defining the duties of secretary-treasurer of a national farm loan association does not modify the language used in Sections 7, 11 and 12 of the Act. (12 U. S. C., Sections 720, 761 and 772.)

When the appellant issued its check payable jointly to respondent and the secretary-treasurer of the Columbus National Farm Loan Association, it was intended by the parties that the funds should reach the duly designated depository of the Association, (Federal Land Bank of Omaha v. Omaha National Bank of Omaha, 118 Neb. 489, 225 N. W., 471). In this case it was held that the endorsements of the borrowers were not necessary as the funds reached the duly designated depository of the national farm loan association as intended by the parties to the transaction and as directed by the provisions of the Federal Farm Loan Act.

In the case of McFadden v. Bland, 147 S. C. 27, 144 S. E. 592; it was held that the endorsement of the applicant payee while necessary was a mere formality.

The appellant says in its brief (page 18) that under the terms of the Act it is not mandatory that the funds be transmitted through national farm loan associations. The question is not considered material by the appellant, nor does the re-

spondent consider it material. If the appellant is correct that it had an election, it elected to transmit the funds through the association. Under every view, the funds are exactly where all parties contemplated they should be, and where Congress directed. The act of Mrs. Gaines in authorizing the endorsement of the check on her behalf did not have any bearing as the funds reached the place intended by all parties.

The respondent therefore respectfully submits that under a proper construction of the Federal Farm Loan Act, Congress intended Federal land banks to advance funds to national farm loan associations and that the associations were to deliver such funds to its shareholders on receipt of first mortgages, and that in the instant case, until the association delivered the funds to respondent, she should not be liable.

III. THE NATIONAL FARM LOAN ASSOCIATION WAS NOT THE AGENT OF RESPONDENT FOR THE PURPOSE OF RECEIVING THE FUNDS IN QUESTION, BUT WAS A PUBLIC AGENT.

The appellant contends that the national farm loan association is not the bank's agent. With equal force the respondent contends that the national farm loan association is not the agent of the borrower for the purpose of receiving funds to make a loan to one of its shareholders. The respondent relies upon the provisions of the Federal Farm Loan Act above discussed (12 U. S. Code, Sections 720, 761, and 772) and also on the cases of Bjorkstam v. Federal Land Bank, 138 Wash. 456, 244 Pac. 981, and Federal Land Bank of Columbia v. Shingler, et. al., 174 Ga. 352, 162 S. E. 815.

In the Washington case cited, the Court says:

"Under Federal Farm Loan Act secretary-treasurer

> of local farm loan associations is not the agent of the Federal Land Bank making loan, but is public agent whose authority parties dealing with him in that capacity were bound to know."

In the case of Holvick v. Black, 57 N. D. 270, 221 N. W. 71, the Supreme Court of North Dakota quotes with approval the foregoing part of the opinion in the Bjorkstam case and continues:

> "There is no doubt but what this is correct as a general statement. Of course this does not preclude the Federal Land Bank making the secretary-treasurer of the local farm loan association its agent, if it sees fit, either directly or indirectly."

In applying for a loan respondent was acting in accordance with the provisions of the Federal Farm Loan Act. In Sec. 14, 12 U. S. C., Sec. 791, we find "that no Federal land bank shall have power to loan on first mortgage except through national farm loan associations or through agents as provided in Section 15." The respondent could not obtain a loan from appellant except through the national farm loan association which served the territory in which respondent lived. Sections 14 and 15 of the Federal Farm Loan Act therefore provide for "intermediaries" through which loans can be made by Federal land banks to borrowers as loans cannot be made direct. The two intermediaries designated are national farm loan associations provided in Section 14 and the agents provided in Section 15 These "agents" can only be designated in territories where there are no associations, as associations have a preference, probably because of their cooperative features. There is no difference in the essential functions and duties of national farm loan associations and the agents designated in Section 15. In Section 15 the intermediaries are specifically designated as "agents" of the Federal land bank. The respondent can see no reason why national farm loan asso-

ciations are not likewise agents of the Federal land bank. The respondent thinks, however, that the better view is that the national farm loan associations being separate and distinct corporate entities created in accordance with the provisions of the Act with designated functions and duties, are "public agents."

The appellant says that it should not be at the mercy of an irresponsible intermediary. (Appellant's brief, pages 30 and 42). In Section 7 of the Federal Farm Loan Act, we find the following:

> "Upon receipt of such articles of association, with the accompanying affidavit and stock subscription, the directors of said Federal land bank shall send an appraiser to investigate the solvency and character of the applicants and the value of their lands, and shall then determine whether in their judgment a charter should be granted to such association. They shall forward such articles of association and accompanying affidavit to the Federal Farm Loan Board with their recommendation. **If such recommendation is unfavorable, the charter shall be refused.**" (Emphasis Ours.)

> "If such recommendation is favorable, the Federal Farm Loan Board shall thereupon grant a charter to the applicants therefor, designating the territory in which such association may make loans, and shall forward said charter to said applicants through said Federal land bank: **Provided,** That said Federal Farm Loan Bank may for good cause shown in any case refuse to grant a charter."

We therefore find that a national farm loan association cannot obtain a charter without the recommendation of the Federal land bank, and in Section 17 of the Act, it is provided "That the Federal Farm Loan Board shall have power to exercise general supervisory authority over the

Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for."

IV. DISCUSSION OF BRIEF OF AMICUS CURIAE

The brief filed by the Amicus Curiae discusses and treats the question as if the bank had delivered the proceeds of this loan to the national farm loan association. The respondent thinks this is the correct view of the case. The Amicus reaches the conclusion that under a correct interpretation of the Act, the mortgage given to the Federal land bank becomes a valid and enforcible contract for which full consideration has passed when the Federal land bank has transmitted the loan funds to the association for the account of its member. With this conclusion respondent does not agree.

The respondent thinks the correct interpretation of the legislative intent should be that applicant for a loan should not become liable for the repayment of the funds until the actual or constructive receipt of the funds. The practice of the Federal land bank has uniformly been to send to the national farm loan association with the check a closed loan form with instructions for the closing of the loan. This procedure was followed in the instant case. The closed loan form is to be signed by the applicant, acknowledging the receipt of the funds.

The respondent respectfully submits that until the closed loan form is signed by the applicant, the transaction, under a correct interpretation of the Federal Farm Loan Act, is an incomplete transaction.

For example, assume that after funds had been transmitted to the association, a defect in the title should be discovered, it would undoubtedly be true that the Federal land bank could recall the funds from the association. The distinction which the respondent seeks to draw is that as long as the funds are subject to the control of the Federal land

bank, the applicant should not be responsible for the payment thereof. The applicant's responsibility should begin when the applicant is given the exclusive disposition of the funds. The funds must of course be disposed of by the applicant in accordance with the provisions of the Act, and when loans are obtained for the purpose of paying debts, on specific liens on property, they must be so applied, and are not subject to some extravagant purposes as suggested in the Amicus brief. To safeguard this Congress directed the supervision of the local association.

Using the illustration of a typical loan, the brief of the Amicus Curiae omits what the respondent thinks is an important statement, that is, the requirement that an applicant sign the bank's regular form of closed loan statement. The respondent concedes that after the signing of the closed loan statement the funds then in the hands of the secretary-treasurer of the association are held "pursuant to the borrower's authorization," as stated in the brief of the Amicus Curiae. The respondent does not think it is debatable that when the funds are held by the secretary-treasurer of the association "pursuant to borrower's authorization," that there is any doubt that the borrower would be liable for the repayment of the funds, because the borrower could then instruct the secretary-treasurer of the association to disburse the funds in accordance with the purposes for which the loan was approved.

In the instant case the secretary-treasurer of the association received the check and "telephoned to Mrs. Will Gaines, and told her that he had received the check, but that the proceeds of same would have to be collected and it would be several days before he would have the proceeds for distribution. He further stated that Mrs. Will Gaines' endorsement was required before the check could be forwarded for collection and that he could be authorized over the telephone to make this endorsement and thus save her

a trip to Columbus. P. S. Lewis further stated to Mrs. Gaines that the funds derived from such check would not be available for distribution until said funds were received in Columbus in the due course of collection, and that in the meantime the Federal Farm Loan Act directed the national farm loan association to receive such funds and retain the custody of the same until disbursed." (Record page 17.) The respondent thinks that these facts lead to the conclusion that the funds were not available for the purpose of closing the loan. Particular attention is here directed to the part of the Act which says, "Funds transmitted to farm loan associations by said Federal land banks to be loaned to its members shall be in current funds or farm loan bonds, at the option of the borrower." (U. S. C. Sec. 772). It does not appear that Mrs. Gaines elected to exercise her option or that the bank undertook to transmit farm bonds to close the instant loan and it must be taken that the parties intended that the funds to be transmitted to close the loan to Mrs. Gaines would be in "current funds." Mr. Lewis evidently did not think the check met the requirements because he told Mrs. Gaines that the proceeds of the check had to be collected and it would be several days before he would have the proceeds for disbusement; that the funds derived from said check would not be available for distribution untid said funds were received in Columbus. It is apparent that Mrs. Gaines wanted to get the funds to pay the obligations stated in her application as soon as the funds were available to her. She made an application for a loan, she furnished the abstract of the title to her property and executed the note and mortgage, all of which were details contemplated by the Act, and the check was endorsed by her authority as another step looking toward the completion of the transaction and the ultimate availability of the funds to her. All parties contemplated that the transaction would be completed and the closed loan form signed as soon as the funds were available for distribution, and this was only prevented be-

cause of the fact that "the proceeds of said check were in due course paid to the said Polk County Bank & Trust Company by its correspondents and almost simultaneously the Polk County Bank & Trust Company closed its doors." (Record page 17).

The brief being discussed says that under the decision rendered in this case, no mortgage securing a loan of the type described is a valid lien for the full face amount of the mortgage unless the last of the loan proceeds has been paid over by the secretary-treasurer of the association to the borrower, or upon his order, to his creditors, and that this rule, if sustained, would render ineligible as collateral security many of the mortgages which are now deposited with farm loan registrars and against which bonds have been issued. The respondent does not think that this is the effect of the decision, but on the other hand, the respondent respectfully submits that when the closed loan form has been signed by the applicant and forwarded by the association to the Federal land bank, the loan is then closed and the mortgage rendered eligible as collateral security for the bonds authorized by the Act. We repeat here what has been said earlier in this brief, that the proper interpretation of the Act is that the association is to receive from the Federal land bank of its district funds advanced by said land bank, and to deliver such funds to its shareholders on receipt of first mortgages, qualified under Section 12 of the Act. Practically applied, this language intends that when the funds advanced by the Federal land bank reach the association, the association is to deliver such funds to its shareholder on receipt of first mortgages, or hold the same for disbursement as otherwise provided in the Act. The closed loan form should be signed simultaneously with the delivery of the mortgage when the funds are available. As the funds in the instant case were not available for distribution due to the element of time between the actual receiving of the funds and the closing of the depository, there

was no actual or constructive delivery of the same to the respondent and she was not requested to sign the closed loan form. Having done everything directed by the Act, in strict accordance with its terms, the respondent respectfully submits that Congress did not contemplate that under the facts in the instant case, the loss should fall upon her.

V. CONCLUSION

In conclusion the respondent respectfully submits that the opinion handed down by the Supreme Court of North Carolina in the instant case is a correct construction of the part of the Federal Farm Loan Act necessary to a decision of this controversy. Any other construction would work a hardship upon the many farmers who seek aid under the provisions of the Act. In the instant case, if the Act is construed in accordance with the contention of appellant, it means that respondent will lose her home of 27 acres, by reason of being held liable for funds which she has not received, either actually or constructively. Respondent made her application for a loan in good faith, and did every thing directed by the Federal Farm Loan Act in an effort to obtain the loan applied for. Through no act of omission or commission is she responsible for the fact that she did not receive the funds. It is respectfully submitted, that under a proper construction of the legislative intent, she should not be liable under the facts in this case.

Respectfully submitted,

M. R. McCOWN,
Tryon, N. C.,
Attorney for Respondent.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA,
PETITIONER,

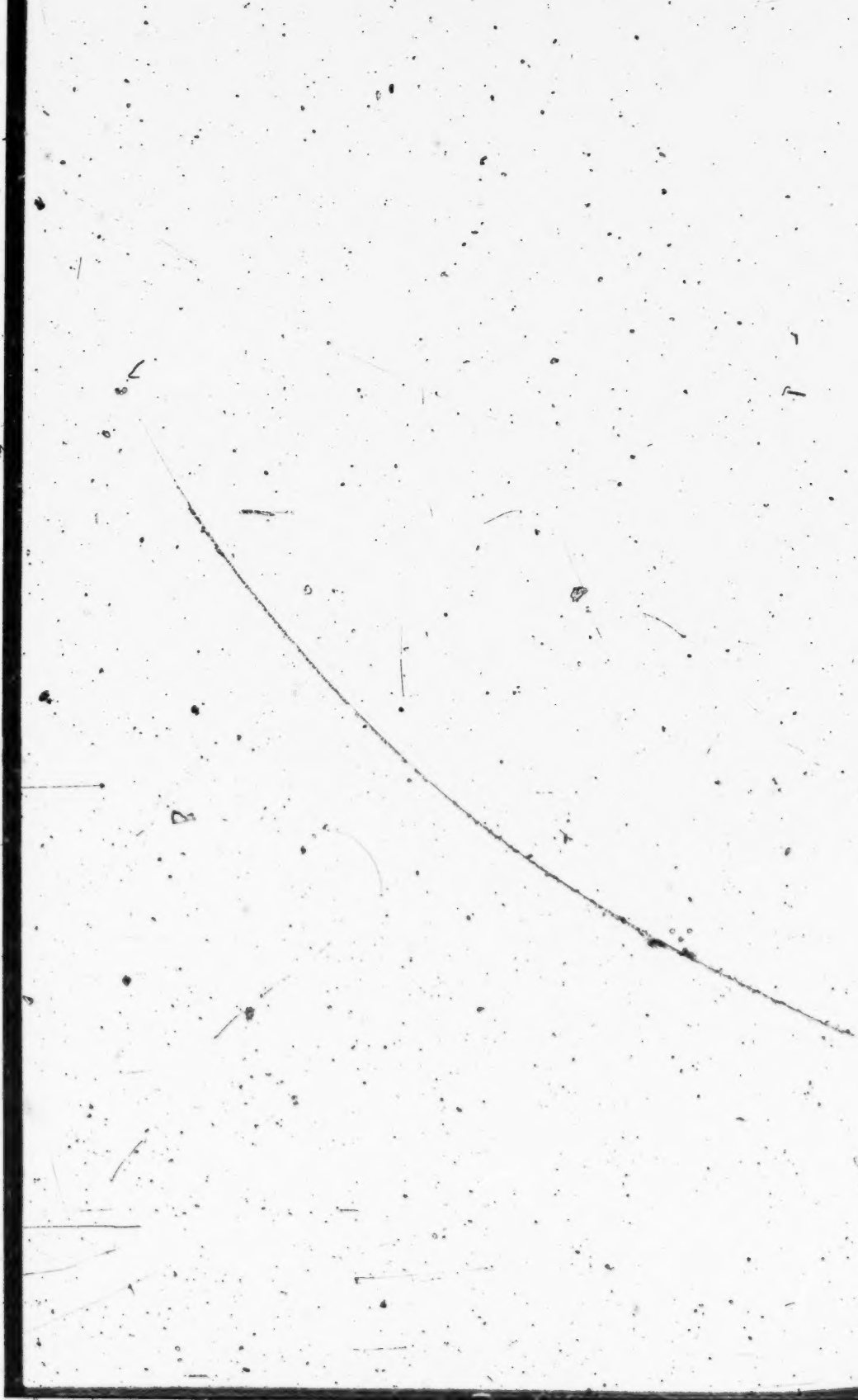
vs.

MRS. WILL GAINES, RESPONDENT.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ, AND BRIEF.

IRVING P. WHITEHEAD,
As Amicus Curiæ, Counsel for

The Federal Land Bank of Springfield, Springfield, Mass.
The Federal Land Bank of Baltimore, Baltimore, Md.
The Federal Land Bank of Louisville, Louisville, Ky.
The Federal Land Bank of New Orleans, New Orleans, La.
The Federal Land Bank of St. Louis, St. Louis, Mo.
The Federal Land Bank of St. Paul, St. Paul, Minn.
The Federal Land Bank of Omaha, Omaha, Nebr.
The Federal Land Bank of Wichita, Wichita, Kans.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Berkeley, Berkeley, Calif.
The Federal Land Bank of Spokane, Spokane, Wash.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA

vs.

MRS. WILL GAINES.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the eleven Federal land banks named below, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiæ*.

IRVING P. WHITEHEAD,
As Amicus Curiæ, Counsel for

The Federal Land Bank of Springfield, Springfield, Mass.
The Federal Land Bank of Baltimore, Baltimore, Md.
The Federal Land Bank of Louisville, Louisville, Ky.
The Federal Land Bank of New Orleans, New Orleans, La.
The Federal Land Bank of St. Louis, St. Louis, Mo.
The Federal Land Bank of St. Paul, St. Paul, Minn.
The Federal Land Bank of Omaha, Omaha, Nebr.
The Federal Land Bank of Wichita, Wichita, Kans.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Berkeley, Berkeley, Calif.
The Federal Land Bank of Spokane, Spokane, Wash.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA

vs.

MRS. WILL GAINES.

BRIEF OF IRVING P. WHITEHEAD, AS AMICUS CURIÆ.

---

1. Preliminary Statement.

Leave to file this brief has been requested by the undersigned as counsel for the eleven Federal land banks named in the accompanying motion.

Each Federal land bank is a corporation organized, chartered and operated under an Act of Congress, approved July 17, 1916, and Acts amendatory thereof, all of which are known and cited as the Federal Farm Loan Act (12 U. S. C., Chapter 7). Each bank is authorized and empowered to engage in the business of lending money to farmers on the security of qualified first mortgages on farm lands situated in the States of its district. The banks on whose behalf this brief is filed, together with the Federal

Land Bank of Columbia, constitute a cooperative system of land banks which conduct and carry on their operations under the same conditions and limitations as set forth in their respective charters and as prescribed by the Federal Farm Loan Act.

The case which is now before this Court involves an interpretation and a practical application of certain provisions of the Federal Farm Loan Act, a Federal statute, which provisions have never been construed or passed upon by this Court or by any Federal court. So far as counsel is advised these particular provisions have been judicially considered only in the case at bar.

All of the Federal land banks, in transacting business with and through the national farm loan associations in their respective districts, have proceeded under the same interpretation of the Federal Farm Loan Act as that which is urged in the brief filed by the Federal Land Bank of Columbia in this case. Therefore, the decision of the questions involved in this case will affect the eleven banks on whose behalf this brief is filed, equally with the petitioning bank. The issues of law involved in this case are of fundamental importance to all the banks of the system.

This brief is respectfully submitted in the belief that the Supreme Court of North Carolina erred in holding that the mortgage executed by Mrs. Will Gaines to secure a loan from the Federal Land Bank of Columbia did not constitute a valid and enforceable lien upon the property described therein.

2. Scope of this Brief.

This *amicus* concurs in the statements which are contained in the brief filed on behalf of the Federal Land Bank of Columbia. The conclusions which are urged upon the court in that brief, and the reasoning in support thereof,

are believed by this *amicus* to be sound and correct. It is, therefore, prayed that the contents of that brief be read as if stated by this *amicus* on behalf of his clients, the eleven banks for which he speaks.

This brief will be confined to a discussion of certain provisions of the Federal Farm Loan Act which were not discussed in detail in the brief on behalf of the Columbia bank. Counsel believes that consideration of these provisions will demonstate the unsoundness of the decision of the court below.

3. The Decision Below.

The Supreme Court of North Carolina held that there was a failure of consideration for a mortgage executed in favor of a Federal land bank, where the loan funds had been paid over to the national farm loan association through which the mortgage loan was negotiated. For the purpose of this brief, no point will be made of the fact that the loan funds were actually transmitted by means of a check drawn to the order of the borrower and the association, which check was duly indorsed with the names of both payees, the proceeds thereof being subsequently transmitted to and received by the holder. The court below treated this case as if the funds had been delivered direct to the association, ignoring the procedure just mentioned. Without concurring in the correctness of the lower court's view in this regard, counsel will, for the purpose of this brief, accept that view and treat the case as if the bank had delivered the proceeds of this loan to the association.

The Supreme Court of North Carolina, in the opinion rendered in this case, made the following statement with respect to Federal land bank loans:

"No loan can be made by a Federal Land Bank directly to the borrower. When the application for a loan has been received by a Federal Land Bank, through a National Farm Loan Association, *the Act requires that funds to close the loan shall be transmitted by the land bank to the association,* for disbursement to the borrower.

"Under the provisions of the Act, the National Farm Loan Association is a public agent, designated by the Act as intermediary between the bank and the borrower." (Italics added.)

It is the belief of this *amicus* that the court erred in placing the above quoted interpretation upon the provisions of the Federal Farm Loan Act relative to loans through national farm loan associations. Counsel believes that a correct interpretation of the Act leads to the following conclusion: Where a loan is negotiated by a borrower through a national farm loan association, which indorses and becomes liable for the mortgage given as security, such mortgage is a valid and enforceable contract, for which full consideration has passed when the Federal land bank has transmitted the loan funds to the association for the account of its member.

4. The Capital of a Federal Land Bank.

Section 4 of the Act (12 U. S. C. § 671) provides that the Federal Farm Loan Board shall divide the continental United States into twelve Federal land bank districts, apportioned with due regard to the farm loan needs of the country, and that the board shall establish in each district a Federal land bank, with its principal office located in such city within the district as the board shall designate.

Section 5 of the Act (12 U. S. C. § 691) requires that every Federal land bank shall have, before beginning business, a subscribed capital of not less than $750,000; that

the capital stock shall be divided into shares of $5 each; that the original stock may be subscribed and held by any individual, firm, or corporation, or by the government of any State or of the United States; and that the Secretary of the Treasury shall subscribe the balance of said $750,000 not otherwise subscribed.

In order to launch the Federal land bank system, it was necessary to provide a working capital until the operations of the system were sufficient to provide the requisite capital funds. Provision was made, however, for the retirement of the original capital stock of the Federal land banks, after the capital stock of any bank subscribed by national farm loan associations should amount to $750,000, so that all stock in the banks should be owned by the national farm loan associations of their respective districts. Section 5 of the Act (12 U. S. C. § 693) provides that stock in a Federal land bank held by national farm loan associations shall not be transferred or hypothecated, and that the certificates therefor shall so state.

Stock in a Federal land bank is purchased by a national farm loan association whenever the association obtains a loan from the bank for one of its members. Under Section 7 of the Act (12 U. S. C. § 711) the association must subscribe for capital stock of the land bank in the amount of 5 per cent of any loan which it desires to secure for any member, subscription to be paid in cash upon the granting of the loan by the bank, and such stock to be held by the bank as collateral security for the payment of the loan. Such stock must be paid off and retired upon full payment of the mortgage loan in connection with which it is subscribed. Therefore, the amount of outstanding stock issued by any Federal land bank fluctuates from time to time, in fact, perhaps from day to day, depending upon the aggregate amount of outstanding loans made by the bank.

At least 25 per cent of that part of the bank's capital for which stock is outstanding in the name of national farm loan associations must be held in quick assets (12 U. S. C. § 697). The capital of a Federal land bank which is contributed through the purchase of stock in such bank by national farm loan associations, and which is available as working capital, is but a very small part of the funds required by the bank in making farm loans. Funds for loaning purposes are obtained, for the most part, by the issuance and sale of bonds in the manner discussed below.

5. Powers of Federal Land Banks.

For the purpose of this brief it is not necessary to consider in detail the several powers of a Federal land bank as specifically enumerated in Sections 4 and 13 of the Act (12 U. S. C. §§ 671-683 and 781). It will be sufficient at this point to call attention to the following powers which were expressly vested in each bank by Section 13 of the Act:

> (*a*) "To issue, subject to the approval of the Federal Farm Loan Board, and to sell farm loan bonds of the kinds authorized in this Act * * *."
>
> (*b*) "To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the Federal land bank district within which it is organized or for which it is acting."
>
> (*c*) "To receive and to deposit in trust with the farm loan registrar for the district, to be by him held as collateral security for farm loan bonds, first mortgages upon farm land qualified under section 12 of this Act (12 U. S. C. § 771)."

The qualified first mortgages referred to in subparagraphs (*b*) and (*c*), above, are such as are eligible under the Act for deposit with the registrar as collateral security

for farm loan bonds issued by the land bank. Section 19 of the Act (12 U. S. C. § 854) provides that:

> "No mortgage shall be accepted by a farm loan registrar from a land bank as part of an offering to secure an issue of farm loan bonds, either originally or by substitution, except first mortgages made subject to the conditions prescribed in sections four, seven, twelve, fifteen and sixteen [12 U. S. C. §§ 671-683, 711-723, 771, and 801-808]."

This section, as amended by the Act of March 4, 1933, empowers the registrar, when authorized and directed so to do by the Federal Farm Loan Board, to accept as collateral, if otherwise eligible, any first mortgage in connection with which the land bank depositing the same has agreed to defer the collection of the principal portion of maturing installments for a period of time in the manner stipulated therein.

It should be stated at this point that the farm loan registrar is a public official wholly independent of the Federal land bank. He is appointed by the Federal Farm Loan Board, under the provisions of Section 3 of the Federal Farm Loan Act (12 U. S. C. § 656). In general it may be said that his duties under the Act are those of a custodian and trustee.

6. Federal Land Bank Bonds.

It has previously been stated that the funds which are loaned by Federal land banks on farm mortgage security are obtained, for the most part, through the sale of bonds issued against eligible collateral. This is the converse of the situation obtaining in the case of insurance companies, which find in the mortgage loan field a means of investing income earned from premiums on their policies. A Federal land bank has no such source of income, being re-

stricted to the business of lending money on farm mortgage security.

The only limitation placed by the Act upon the volume of bonds which may be issued by a Federal land bank, as contrasted with its outstanding capital stock, is contained in the following provisions:

Section 14 (12 U. S. C. § 791):

> "No Federal land bank shall have power * * * To issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital or surplus * * *."

Section 7 (12 U. S. C. § 722):

> "The capital stock of a Federal land bank shall not be reduced to an amount less than five per centum of the principal of the outstanding farm loan bonds issued by it."

Section 18 of the Act (12 U. S. C. § 841) provides that:

> "Any Federal land bank, or joint stock land bank, which shall have voted to issue farm loan bonds under this Act, shall make written application to the Federal Farm Loan Board, through the farm loan registrar of the district, for approval of such issue. *With said application said land bank shall tender to said farm loan registrar as collateral security first mortgages on farm lands qualified under the provisions of * * * [the Act]; or United States Government bonds, not less in aggregate amount than the sum of the bonds proposed to be issued.*" (Italics supplied.)

Section 18 of the Act (12 U. S. C. §§841-844) further provides for the investigation of the mortgages which are tendered by a bank as security for a proposed issue of bonds, and prohibits the issuance of bonds without approval in writing by the Federal Farm Loan Board.

Section 19 of the Act (12 U. S. C. §§ 851-856) provides that whenever an issue of bonds has been approved, the farm loan registrar having custody of the first mortgages and bonds tendered as collateral security shall retain in his custody those first mortgages and bonds which are to be held as collateral security; and that the land bank which is to issue the bonds shall transfer to the registrar, by assignment, in trust, all first mortgages and bonds which are to be held by the registrar as collateral security, "said assignment providing for the right of redemption at any time by payment as provided in this Act and reserving the right of substitution of other [qualified] mortgages * * * Said mortgages and bonds shall be deposited in such deposit vault or bank as the Federal Farm Loan Board shall approve, subject to the control of said registrar and in his name as trustee for the bank issuing the farm loan bonds and for the prospective holders of said farm loan bonds."

This section of the Act also provides that:

> "It shall be the duty of each farm loan registrar to see that the farm loan bonds delivered by him and outstanding do not exceed the amount of collateral security pledged therefor."

Section 20 of the Act (12 U. S. C. §§ 861-863) provides that farm loan bonds—

> "shall be issued in series of not less than $50,000, the amount and terms to be fixed by the Federal Farm Loan Board";

and that they shall be delivered through the registrar of the district to the bank applying for the same.

Section 21 of the Act (12 U. S. C. § 872) provides that:

> "Every Federal land bank issuing farm loan bonds shall be primarily liable therefor, and shall also be liable, upon presentation of farm loan bond coupons,

for interest payments due upon any farm loan bonds issued by other Federal land banks and remaining unpaid in consequence of the default of such other land banks; and every such bank shall likewise be liable for such portion of the principal of farm loan bonds so issued as shall not be paid after the assets of any such other land banks shall have been liquidated and distributed * * *."

The Act provides in detail for the form of farm loan bonds, for the manner in which they shall be executed and certified, etc., which details are not touched upon in this brief. Provision is made also for consolidated bond issues, to be participated in by some or all of the Federal land banks, in accordance with a procedure essentially similar to that outlined above in connection with farm loan bonds issued by an individual bank.

From the foregoing provisions of the Act, it is apparent that any Federal land bank which is making loans in large volume must avail itself of the provisions of the Act for obtaining money upon the issuance of bonds; and that the Act clearly contemplated lending activities which would involve the issuance of bonds up to the maximum ratio of $20 for each dollar of outstanding stock. This procedure appears to involve the investment of the bank's capital to the extent of $50,000 or more in qualified first mortgages; the deposit of such mortgages as collateral security for bonds of like amount; the sale of such bonds, and the investment of the proceeds of sale in further mortgages which in turn will be deposited as collateral security for further bond issues. Only in this manner can the banks obtain funds with which to meet a large current demand for loans.

7. This Case and Its Relation to Federal Land Bank Bonds.

In the case at bar, a Federal land bank made a loan through a national farm loan association. The Court held

that although the association had received the full proceeds of the mortgage loan, the mortgage executed to secure the same did not constitute a valid lien upon the borrower's land. If the decision of the lower court should be sustained, the Federal land banks would find themselves with outstanding bonds secured in part by mortgages which have failed of consideration, because in many instances the indorsing national farm loan associations have not completed their disposition of the loan proceeds.

As has been stated in the brief filed on behalf of the Federal Land Bank of Columbia, most loans made by Federal land banks must be made through national farm loan associations. Practically all of the mortgages which have been pledged by these banks as collateral security for farm loan bonds were written through national farm loan associations. In thousands of instances the loan funds were delivered by the lending bank to the indorsing national farm loan association, frequently in the manner followed in this case, by means of a check drawn to the order of the association's secretary-treasurer and the borrower.

Let us consider a typical loan. A farmer applies for and obtains, through a national farm loan association, a loan of $5,000. Of this amount $3,000 is borrowed for the purpose of liquidating an over-due mortgage held by the receiver of a closed bank; $250 to pay delinquent taxes; $1,000 to discharge miscellaneous indebtedness which does not constitute a lien upon the land; the remaining $750, after deducting the charges of the land bank and national farm loan association incident to obtaining the loan, and the amount requisite for the borrower's stock subscription, is to be used for repairs to essential farm buildings. In that case, under the procedure authorized by the Federal Farm Loan Act, the land bank would remit the net proceeds of

the loan to the association. It probably would join the borrower as a copayee of the check, in order that he be certain of learning promptly that remittance had been made. The secretary-treasurer of the association would obtain a release of the outstanding mortgage and a receipt for the taxes, and the abstracting attorney would thereupon bring his abstract down to date, showing the bank's mortgage to be a first lien. This would leave in the hands of the secretary-treasurer of the association a balance of close to $1,700, from which, pursuant to the borrower's authorization, the secretary-treasurer would pay off the miscellaneous items of indebtedness. These items may and often do involve considerable time and effort on the part of the secretary-treasurer. In our hypothetical case, a portion of the loan proceeds is to be used by the borrower to pay for the cost of repairs upon his buildings, and the secretary-treasurer is required by Section 7 (12 U. S. C. § 714) of the Federal Farm Loan Act to see that the money is expended for this purpose. As a practical matter he will probably do so by holding the money and disbursing the same in payment of approved vouchers, or upon delivery of receipted bills.

It is apparent from the example just cited that it may be months before the last dollar of a Federal land bank loan actually finds its way into the hands of the borrower or of his creditors for the payment of whose bills he obtained a Federal land bank loan. In the meantime, the money is with the association, for the account of the borrower.

Under the decision rendered in the case at bar, no mortgage securing a loan of the type described in the foregoing example is a valid lien, for the full face amount of the mortgage, unless the last of the loan proceeds has been paid over by the secretary-treasurer of the association to the borrower or, upon his order, to his creditors. This rule,

if sustained, would render ineligible as collateral security many of the mortgages which are now deposited with the farm loan registrars and against which bonds have been issued.

It is respectfully submitted by this *amicus* that the Federal Farm Loan Act not only authorizes a Federal land bank to pay the consideration for a first mortgage to the indorsing national farm loan association, but makes such payment complete and valid as to the borrower. We have already mentioned the provision of Section 7 of the Act (12 U. S. C. § 714), by which the secretary-treasurer is required "to assure himself from time to time that the loans through the national farm loan association of which he is an officer are applied to the purposes set forth in the application of the borrower as approved". In this connection we also invite the Court's attention to the following provision of Section 12 of the Act (12 U. S. C. § 771, Tenth):

> "Every borrower who shall be granted a loan under the provisions of this Act shall enter into an agreement * * * that if the whole or any portion of his loan shall be expended for purposes other than those specified in his original application, * * * the whole of said loan shall, at the option of the mortgagee, become due and payable forthwith."

It is believed that these provisions of the Act, together with those which are discussed in detail in the brief of the Federal Land Bank of Columbia, clearly sustain the proposition that when a Federal land bank pays loan proceeds to the association which is authorized to receive them for the account of the borrower, such payment constitutes delivery of consideration for the mortgage; that the secretary-treasurer of the association may, in his discretion, pay over the loan proceeds to the borrower and then follow up the case to see that they are applied to the purposes for which they were obtained, or may retain such loan proceeds and

pay them himself in satisfaction of the debts or in payment of the accounts which the borrower stated in his application that he intended to liquidate from his loan.

The experience of the Federal land banks has indicated the wisdom of the provisions of law which permit the secretary-treasurer so to control the proceeds of the loans indorsed by his association. A loan is made not only upon the appraised value of the land, but also upon the anticipated ability of the farmer, after obtaining the loan, to meet his living expenses, his farm expenses and the installments on his loan from the fruits of the farm. If, instead of utilizing the loan proceeds in the example cited above for the purpose of making necessary repairs to essential farm buildings, the borrower should apply them to some extravagant purpose not requisite for the maintenance of the farm or the farm family, the security for the loan would not be placed in the condition that was anticipated by the association and the bank at the time the loan was indorsed by the one and made by the other. The association, as a co-obligor under the mortgage contract, is fundamentally interested in seeing that the loan funds are used for the purposes stated in the application. The Act provides the means by which the association can enforce such use of the funds, by authorizing the bank to make payment to it. The Act protects the borrower from misapplication of the funds by the association's secretary-treasurer by requiring him to be bonded (12 U. S. C. § 714).

8. This Case and the Future Operations of the Federal Land Banks.

The attention of the Court is invited to the provisions of the Emergency Farm Mortgage Act of 1933 (Public Law No. 10, 73d Congress, approved May 12, 1933). This Act authorizes the Federal land banks, during the two-year period following the passage of the Act, to issue bonds in

the amount of $2,000,000,000, such bonds to be fully guaranteed as to interest by the United States. The circumstances under which this Act was passed are familiar to the Court. The purpose of this provision, as the Court knows, was to provide a means whereby the indebtedness of the American farmer could be refinanced, to the extent possible thereunder, for the relief of the emergency so well known to the Court.

In making this provision, Congress selected the existing Federal land bank system as the instrumentality through which the refinancing activities should be conducted with respect to farm mortgages. If the Federal land banks are to perform the services contemplated by the Emergency Farm Mortgage Act, they must be in position to close $2,000,000,000 in farm mortgage loans within the short space of two years.

In order to lend two billion dollars, the Federal land banks must issue two billion dollars in bonds. These bonds can not be issued in anticipation of mortgages to be acquired. They can not be issued against mortgages which do not constitute first liens on the properties described therein for the full face amount recited in the mortgages and notes (opinion of Solicitor of the Treasury, March 21, 1927, copy annexed as Exhibit A). They may be issued only against collateral security equal in face amount to the bonds, and such security must consist of United States Government bonds (the purchase of which obviously does not help in the program of getting money quickly to the farmers) or mortgages constituting first liens on farm lands.

The banks will be greatly hampered in performing the services incident to the refinancing of farm debts if they are unable to close their loans through national farm loan associations in the manner authorized by the Federal Farm Loan Act, and to obtain valid mortgages for the full amount

of such loans upon delivery of consideration to the indorsing national farm loan association. Under the decision of the court below in this case, a Federal land bank could not obtain a valid first lien which would be available as collateral security for bonds until the secretary-treasurer of the association had disposed of the last dollar of the amount received by his association "for the account of" the borrower.

The court below held that the association's receipt of such fund it not a receipt by or for the borrower. It held also that the bank must make payment for the mortgage by delivering the funds to the association. These two conclusions we submit, if sustained, would hamper the banks in ordinary times. Under present conditions, with the urgent necessity which confronts the banks for rendering prompt service to applicants for loans, these two conclusions would have an extremely grave result. It would be impossible to predict the length of time which may elapse in the case of any particular mortgage between the date the bank transmits the loan proceeds and the date when the last item is cleared by the national farm loan association. During that entire period, in the case of each loan, the mortgage would be in suspense so far as the bank is concerned: It would constitute a potential mortgage, and not a first lien for the amount recited therein and paid out by the Federal land bank. It would not be available to the bank for deposit as collateral security for bonds from the sale of which further funds must be obtained in order to meet the requirements of thousands of applicants for Federal land bank loans.

9. Conclusion.

In conclusion, it is respectfully submitted that, both on the grounds presented in the brief filed on behalf of the Federal Land Bank of Columbia, and by reason of the

structure and mode of operation of a Federal land bank, as outlined herein, a correct interpretation of the Federal Farm Loan Act leads to the conclusion that a Federal land bank is authorized to deliver to a national farm loan association the proceeds of a loan made through such association, and that such delivery constitutes a complete performance by the bank of its obligations under the mortgage contract, and a delivery of consideration for the mortgage executed by the borrower in favor of the bank.

Respectfully submitted,

IRVING P. WHITEHEAD,
As Amicus Curiæ, Counsel for
The Federal Land Bank of Springfield, Springfield, Massachusetts.
The Federal Land Bank of Baltimore, Baltimore, Maryland.
The Federal Land Bank of Louisville, Louisville, Kentucky.
The Federal Land Bank of New Orleans, New Orleans, Louisiana.
The Federal Land Bank of St. Louis, St. Louis, Missouri.
The Federal Land Bank of St. Paul, St. Paul, Minnesota.
The Federal Land Bank of Omaha, Omaha, Nebraska.
The Federal Land Bank of Wichita, Wichita, Kansas.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Berkeley, Berkeley, California.
The Federal Land Bank of Spokane, Spokane, Washington.

EXHIBIT A.

Office of the Solicitor of the Treasury.

March 21, 1927.

Hon. Carl T. Schuneman,
Assistant Secretary of the Treasury.

SIR:

Receipt is acknowledged of your communication under date of March 15, 1927, as well as of the copy of an opinion of counsel for the Federal Farm Loan Board thereto attached.

In answer to your query:

> "1. Has the Federal Farm Loan Board the authority to approve for less than the face amount, as security for bonds, a first mortgage taken for an amount in excess of the statutory limitations?",

you are advised that, in my opinion, it has not.

Section 12 of the Federal Farm Loan Act provides

> "That no Federal land bank organized under this Act *shall make loans except upon the following terms and conditions:*
>
> First. Said loans shall be secured by duly recorded first mortgages on farm land within the land bank district in which the bank is situated.
>
> * * * * * * *
>
> Fifth. No such loan shall exceed fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal, as provided in section ten of this Act. In making said appraisal the value of the land for agricultural purposes shall be the basis of appraisal and the earning power of said land shall be a principal factor."

Section 14 of said Act provides

> "That no Federal land bank shall have power—
>
> • • • • • • •
>
> Third. To accept any mortgages on real estate except first mortgages created *subject to all limitations imposed by section twelve of this Act.*"

Section 16 of said Act (*vide* paragraphs 3 and 8 thereof) makes the foregoing provisions also applicable to joint stock land banks.

Therefore, if a land bank should proceed to make a loan in excess of

> "fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon,"

the note as well as the mortgage securing said loan could not lawfully be assigned to and accepted by a farm loan registrar as security for a farm loan bond issue, because Section 19 of the Act (*vide* paragraph 4 thereof) provides that

> "No mortgage shall be accepted by a farm loan registrar from a land bank as part of an offering to secure an issue of farm loan bonds, either originally or by substitution, except *first mortgages made subject to the conditions prescribed* in said sections twelve, • • • and sixteen."

As the foregoing provisions are mandatory, it follows that if a first mortgage is "taken for an amount in excess of the statutory limitations" aforesaid, the same is ineligible as security for a bond issue, and can not be made eligible for said purpose by the Farm Loan Board's approval for an amount less than the face value thereof.

It follows also that the Federal Farm Loan Board has no

> authority "to approve for less than the face amount, as security for bonds, a first mortgage taken for an amount in excess of the statutory limitations."

In answer to your query:

> "2. Has the Federal Farm Loan Board the authority to approve as security for Farm Loan Bonds a first mortgage which does not exceed fifty per centum of the appraised value of acquired land sold by a Land Bank and twenty per centum of the appraised value of the improvements thereon, regardless of the manner in which the balance of the sale price is secured,"

you are advised that, in my opinion, it has.

As has hereinbefore been pointed out land banks are authorized to make loans on approved first mortgage security, *provided* the amount loaned thereon *does not*

> "*exceed* fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal as provided in section ten"

of the Federal Farm Loan Act.

It has also been seen that such first mortgages (*vide* § 19, paragraph 4, hereinbefore quoted of the Farm Loan Act) may be accepted by farm loan registrars

> "as part of an offering to secure an issue of farm loan bonds, either originally or by substitution."

Therefore, if a first mortgage

> "which does not exceed fifty per centum of the appraised value of acquired land sold by a land bank and twenty per centum of the appraised value of the improvements thereon"

is taken as part payment therefor, said mortgage is eligible security for farm loan bonds,

> "regardless of the manner in which the balance of the sale price is secured."

The Act places no restrictions on the sale by land banks of acquired lands, and the "manner in which the balance

of the sale price is secured" by a purchaser thereof does not affect the stability and eligibility of the first mortgage loan for bond security purposes if said first mortgage loan has been made in compliance with the provisions of the statute.

Respectfully,

(Signed) R. J. MAWHINNEY,
Solicitor.

(4162)

SUPREME COURT OF THE UNITED STATES.

No. 112.—October Term, 1933.

Federal Land Bank of Columbia, S. C., Petitioner, *vs.* Mrs. Will Gaines. } On Writ of Certiorari to the Supreme Court of North Carolina.

[December 4, 1933.]

Mr. Justice Stone delivered the opinion of the Court.

This suit was brought by respondent in the Superior Court for Polk County, North Carolina, to cancel a mortgage, given by her to petitioner, as invalid for want of consideration. It presents a question of the construction of the Federal Farm Loan Act of July 17, 1916, c. 245, 39 Stat. 360, which was raised and decided upon an agreed statement of facts. Judgment for respondent was affirmed by the Supreme Court of the State, 204 N. C. 278. The case comes here on certiorari. — U. S. —. (Certiorari granted October 9, 1933.)

On August 16, 1930, respondent applied to petitioner, through the Columbus Farm Loan Association, for a loan secured by mortgage upon her land, located in Polk County. The loan was approved by the Loan Association on October 1, 1930, and on that day respondent was admitted to membership in the Association. In due course she executed a promissory note to petitioner, secured by mortgage upon her land, both of which she delivered to petitioner as required by the provisions of the Federal Farm Loan Act. The note, as the statute commands, bore endorsement of the agreement of the Association to be liable upon it. Petitioner's check for the amount of the loan, less authorized charges, made payable jointly to the Secretary-Treasurer of the Association and respondent, was delivered by petitioner to attorneys of the respondent together with a "closed loan statement." This statement was a detailed report of the loan transaction, including data of the disbursement of its proceeds and of fees charged by the Association to the borrower. The Secretary-Treasurer was to fill out the state-

ment after the loan transaction was completed, procure the borrower's signature to it and return it to the bank. These documents were delivered by the attorneys to the Secretary-Treasurer who, after the check was duly endorsed by the payees, deposited it in a bank to the credit of the Association. At the time of the endorsement and before, respondent understood that the check was to be so deposited and the proceeds after collection were to be disbursed by the Association for the purposes for which the loan was procured. The bank, immediately after collection of the check, closed its doors and the proceeds of the collection, with an exception not now material, have not become available either to the Association or the respondent.

The Supreme Court of North Carolina, construing the provisions of the Federal Farm Loan Act, concluded that the Association, organized under its provisions as an intermediary between the borrower and the petitioner, acted as a "public agent" and that the receipt by it and the deposit of the check for collection and credit, though it was first endorsed by respondent, was not a receipt of the loan by the borrower or in her behalf such as to establish liability of respondent upon her note.

The Federal Farm Loan Act was adopted in response to a national demand that the federal government should set up a rural credit system by which credit, not adequately provided by commercial banks, should be extended to those engaged in agriculture, upon the security of farm mortgages. The report of the Senate Committee which drafted the bill enacted as the Federal Farm Loan Act, Report of Senate Committee on Banking and Currency, No. 144, 46th Cong., 1st Sess., emphasizes as features of the proposed national rural credit system the creation of regional federal land banks under control of the Farm Loan Board. The banks were to make loans to farmers, upon the security of farm mortgages, with funds obtained in large part by the sale to investors of long term bonds. See also Report of House Committee on Banking and Currency, No. 630, 64th Cong. 1st Sess. To adapt the system to local needs and to promote cooperation among borrowers, it was proposed that the loans should be made through local associations controlled by their membership, composed exclusively of borrowers.

These proposals were carried out in the Federal Farm Loan Act by providing for the creation of twelve regional federal land banks,

§ 4; 12 U. S. C., §§ 671, 683, of which petitioner is one, all under the direction and control of the Federal Farm Loan Board.[1] § 3; 12 U. S. C., §§ 651, 652. Each has authority to lend money on the security of mortgages on farms within its own district. § 13; 12 U. S. C., § 781. The banks are authorized to issue farm loan bonds secured by mortgages taken as security for loans. They are without authority to make loans "except through National Farm Loan Associations", organized as provided by other sections of the Act, § 14; 12 U. S. C., § 791,[2] or by agents, which are banking institutions organized under state laws. § 15; 12 U. S. C., § 803. They may make loans only for specified agricultural purposes, including the payment of existing loans upon the security of farm lands or the purchase of farm lands or equipment for them or their improvement. § 12, Par. Fourth; 12 U. S. C., § 771. Loans are made on written applications which are required to designate the purpose for which the loan is to be used and the borrower is required to agree that the loan shall be used for those purposes. § 12, Par. Eighth; 12 U. S. C., § 771

National farm loan associations are local associations, organized under charters granted by the Federal Loan Board, § 7; 12 U. S. C., §§ 711, 719. Their membership is restricted to those who are borrowers from federal land banks. They are controlled by boards of directors elected by their members who, with the exception of the Secretary-Treasurer, the chief executive officer of the association, serve without compensation. §§ 7, 8; 12 U. S. C., §§ 712, 713, 733. They are also authorized to charge fees to bor-

[1]The Farm Loan Board consisted of the Secretary of the Treasury and six members, appointed by the President, § 3; 12 U. S. C., § 652. After the entry of the final judgment in this cause, the Federal Farm Loan Board was abolished and its functions were transferred to the Farm Loan Commissioner, subject to the jurisdiction and control of the Farm Credit Administration, by Executive Order of the President, No. 6084 of March 27, 1933; the name of the officer of the Farm Loan Commissioner was afterward changed to that of Land Bank Commissioner, by Act of June 16, 1933, Session Laws, First Session 1933, 273.

[2]By Act of March 4, 1933, Session Laws, Second Session, 1932, 1933, pp. 1547, 1548, after the loan transaction in the present case, this section was amended so as to permit loans to be made either through National Farm Loan Associations or direct to borrowers, as provided in § 7. § 7 was also amended so as to provide for direct loans in localities where no Farm Loan Associations have been organized.

rowers, limited in amount, § 11; 12 U. S. C., § 761, "to endorse and thereby become liable for the payment of mortgages taken from its shareholders by the Federal Land Bank of its district", § 11; 12 U. S. C., § 761, and to receive from the federal land bank "funds advanced" by the land bank and to deliver them to its members on receipt of first mortgages. §§ 7, 11; 12 U. S. C., §§ 720, 761. By § 14; 12 U. S. C., § 714, the Secretary-Treasurer is the custodian of the funds of the association, which are required to be deposited in a bank designated by the board of directors. He is required to "assure himself" "that the loans made through the National Farm Loan Association of which he is a member are applied to the purposes set forth in the application of the borrower," to pay over to borrowers all sums "received for their account from the Federal Land Bank upon first mortgage", and acting under the direction of the association "to collect, receipt for and transmit to the Federal Land Bank payments of interest, amortization, installments or principal arising out of loans made through the Association", and to report to the land bank of the district any failure of the borrower to comply with the terms of the application or mortgage, and any delinquent taxes on land mortgaged to the bank. Expenses of the Secretary-Treasurer are payable from the funds of the association, and if such funds are not available, by levy of assessment on the members. § 7; 12 U. S. C., § 715.

Borrowers from federal land banks through national farm loan associations are required to subscribe and pay for shares of stock in the association to an amount equal to 5% of the face of the loan, which stock is to be paid off at par and retired upon full payment of the loan. § 8; 12 U. S. C., § 733. The cost of these shares may be included in the loan. § 9; 12 U. S. C., § 742. The association in turn is required "whenever" it "shall desire to secure for any member a loan on first mortgage from the Federal Land Bank of its District" to subscribe and pay for capital stock of the lending federal land bank in like amount, and similarly this stock is to be retired upon payment of the mortgage loan. § 7; 12 U. S. C., § 721.

In the present loan transaction, carried out in strict conformity with the statute, it was plainly contemplated that petitioner was to be the lender and as lender it was to become the owner of the note and the mortgage, in which it was named respectively as

payee and mortgagee. Respondent, as maker of the note, and the Association, by its endorsement agreeing to be liable for its payment, were both to be obligated to pay the loan. As between the two, the Association was in the position of a surety or guarantor, entitled to be exonerated by the mortgage security and protected to some extent by the 5% stock subscription exacted of respondent. If the transaction were unaffected by the provisions of the Farm Loan Act, it would require no argument or citation of authority to support the conclusion that the delivery of the note and mortgage to the lender, and the receipt of the check from the lender, payable to the obligors upon the mortgage indebtedness, and their endorsement and the collection of it would establish their liability for the payment of the loan, regardless of what might become of the proceeds.

The state court rested its decision on the characterization of the Association as a public agent, but it did not hold that the Association was in any sense an agent for the lender bank. It could not well have done so, for neither the provisions of the Farm Loan Act nor the particular circumstances which attended the loan in the present case gave to the petitioner any right of control over the Association or any power to recall the check or its proceeds after its delivery and collection. The Association was controlled by directors, elected by its own members, who, like the respondent, were borrowers. After the check was delivered to the Association it passed completely from the control of the lender and into the exclusive control of the payees who were the obligors of the mortgage indebtedness.

It is true that both the petitioner and the Association were, in a broad and general sense, public agencies or instrumentalities to carry out a policy of the government—the extension of credit to those engaged in agriculture to be availed of in the furtherance of agricultural undertakings. But those purposes could only be achieved through loans made to private individuals. The borrower is under no legal compulsion to borrow. If he takes the benefit of the privilege extended by the statute he can do so only in compliance with its requirement that he shall join, with himself as obligor, the local cooperative association of which he is a member. This supplies a strong incentive on the part of the associations to perform the duties commanded by the statute looking to the

safety and security of the loan and, as agreed by the borrower and required by the statute, its disbursement for the purposes for which it is made. By applying for the loan and delivering to the lender her mortgage and note, endorsed by the Association, in compliance with the Act, respondent consented in advance to the procedure for creating and disbursing the loan which the statute prescribes. She renewed that consent when her endorsement of the check was made, with full knowledge that the Association, her co-obligor, was to deposit the check to its credit and disburse the proceeds for the purposes for which the loan was made. This consent could not be affected by the closed loan statement which it was intended she should later sign. The statement was to be merely a confirmation or report of what had gone before. The endorsement of the check was the crucial act, for it drew the funds from the control of the petitioner and dedicated them irrevocably to the purposes for which the loan had been secured.

We can perceive no inconsistency between the public ends to be effected and the purpose plainly exhibited by the statute and the conduct of the parties that they should occupy the position of co-obligors upon the loan indebtedness, with the mutual understanding that one of them, the Association, was to disburse the proceeds of the loan for purposes agreed upon. And we can discern no difference between the legal consequence of their acts and that which would have ensued had respondent consented that the loan be received and disbursed by any third person who afterward had lost the money, or if she had, herself, taken the endorsed check and deposited it to her credit in the insolvent bank. If we thought this conclusion more doubtful, we should regard as persuasive the fact that a different conclusion would break down the scheme of the Act to make the mortgages taken by the federal land banks available as collateral for federal land bank bonds sold to investors. Its operation would be seriously impaired if such use of the mortgages taken must await the long period which may often elapse after the lending bank has paid out its money, and before the disbursement of it is completed by the local association.

We conclude that there was no failure of consideration for the mortgage and that the judgment of the state court must be

Reversed.